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An agent of the owner to sell property can not be an agent for the purchaser to buy the same. But the rule does not apply where the agent acts as a middleman to bring the parties together, or acts for both with the knowledge and consent of both. *Fritz v. Finnerty*, 487.

One authorized to act as agent for another in selling property can not become the purchaser and receive commissions for effecting the sale, except with the previous consent of his principal. The same rule governs a purchasing agent. *Id.*

An agent to sell may become interested in the subject-matter of the sale, after the transaction is complete and his duties as agent ended. Thus, where an agent to sell a mine had bonded the property and obtained a deposit to be forfeited upon the obligee's failing to complete the transaction: *Held*, that though not discharged from his duty to consummate the bargain, he could assume the character of purchaser from or agent for the grantee, pending the time for consummating the bargain, as rights and duties thus assumed would not conflict with those of the seller. *Id.*

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But when the court below has jurisdiction of the cause, and the matter charged is indictable under a constitutional law, any error committed by the inferior court can only be reviewed by writ of error. *Id.*

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The lien under the law is established by statute and not by the court. The required facts being found, the lien follows as of course, 434.

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COMMON CARRIERS.

Of Goods.

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In an action against a railroad company for the loss of a case containing a portrait of the plaintiff's father, which was delivered to it for transportation, statements and letters of the defendant's freight agent made after their loss and in relation thereto are admissible and competent. *Green v. Boston etc. R. Co.*, 207.

Upon the cross-examination of such agent, who was produced as a witness for the plaintiff, the question whether "he had any authority to take such goods as this case contained" was rightly excluded. *Id.*

A portrait is not an "article of great intrinsic or representative value," within the meaning of a freight contract requiring a representation of the value, and a special agreement for the transportation thereof. *Id.*

The true measure of damages for the loss of a family portrait having no market value is its actual value to its owner, and his testimony that he had no other portrait of the same person, would bear upon the question of its actual value to him, and would be competent. *Id.*

Evidence that the case, together with other household furniture filling two cars, was delivered to the defendants at Lawrence to be transported to Providence, whence it was to be carried by the Clyde Line to Philadelphia; that the two cars were received by the agents of the Clyde Line from the defendants "unopened and just as they were received from the North," and were kept carefully watched and guarded until the goods were transferred to the steamer, and that on unloading the cars it was found that the case was not in either car, would justify the jury in finding that the said portrait was lost while in the possession of the defendants. *Id.*

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A common carrier is as much bound to carry for another common carrier as he is for others. Therefore, a railroad company can not refuse to carry for an express company, nor to extend to its messengers and agents the facilities requisite to the prosecution of the express business. *Dinsmore v. Nashville etc. R. Co.*, 468.

Of Passengers.

Police Duties of Common Carriers, 41.

Liability of common carriers of passengers, 56.

Sleeping car companies are neither common carriers nor inn-keepers, but they are bound like other bailees to use ordinary care, which must be in proportion to the danger, and consequently greater in the night while the passenger is asleep than in the day time. *Diehl v. Woodruff*, 66.

The fact that articles or money lost or stolen from the passenger were carried by him about his person or under his personal supervision, does not exonerate the sleeping car company from the duty to use ordinary care in respect to them; but the right of recovery is limited to such articles as it is usual and proper for a traveler to carry about his person, and to such a reasonable amount of money as it may be proper for him to carry for traveling expenses. *Ibid.*

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CONSTITUTIONAL LAW.

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A statute which under the pretext of preserving the public morals, provides for the seizure of private property, should also provide a summary mode of judicial proceedings for determining whether it is the kind of property, and was used or held for the purposes condemned by it, and not so providing is unconstitutional and void. *Lowry v. Rainwater*, 29, 35.

The act of the Missouri Legislature creating the board of police commissioners for the city of St. Louis, which authorizes the president of the board, upon satisfactory information that there are any prohibited gambling tables or other gambling devices in the city of St. Louis, to issue his warrant for their seizure, and to cause the same to be publicly destroyed by burning or otherwise, is unconstitutional. *Id.*

Constitutional right of citizens to bear arms, 45.

Kentucky statute as to criminal procedure is unconstitutional, so far as it attempts to authorize, after jeopardy attaches, dismissal of an indictment for felony so that it may not operate as a bar to a future prosecution for the same offense, 55.

City ordinance forfeiting stock running at large unconstitutional, if question of forfeiture is not judicially determined, 73.

The code of Iowa (§ 3058) provides that the claimant or purchaser of any property, for the seizure or sale of which an indemnifying bond has been taken and retained by the officer, shall be barred of any action against the officer levying on the property, if the surety in the bond was good when it was taken. *Held*, unconstitutional, so far as it declares that the owner can not maintain an action for the recovery of the specific property against an officer who has levied thereon under an execution against another. *Towle v. Mann*, 126.

The Constitutionality of "Local Option" Laws, 203.

A State statute which imposes a license tax upon all travelling merchants, agents, etc., who travel in the State and sell, or offer to sell, goods by sample or otherwise, to be delivered at a future time, without any discrimination against the goods or products of other States, does not violate the provisions of the Constitution of the United States forbidding the levying of imposts, or duties on imports, or conferring upon Congress the power to regulate commerce between the States, with respect to goods sold by such travelling agents or drummers, for their employers doing business in another State, to be shipped at a future date to the purchaser. *In re Rudolph*, 224.

The statute of West Virginia which denies to colored citizens the right and privilege of participating in the administration of the law, as jurors, because of their color, though qualified in all other respects, is a discrimination against that race forbidden by the Fourteenth Amendment. It is a denial of the equal protection of the laws to the race thus excluded, and is unconstitutional, since the constitution of juries is a very essential part of the protection which the trial by jury is intended to secure. *Strauder v. State*, 225.

Sec. 641 of the Revised Statutes, which declares that "when any civil suit or criminal prosecution is commenced in any State court, for any cause whatsoever against any person who is denied or can not enforce in the judicial tribunals of the State, or in the part of the State where such suit is or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States, * * * such suit or prosecution may, upon the petition of such defendant, filed in said State court, at any time before the trial or final hearing of the cause, stating the facts and verified by oath, be removed, for trial, into the next circuit court to be held in the district where it is pending," is constitutional. *Id.*

CONSTITUTIONAL LAW—Continued.

The prohibitions of the Fourteenth Amendment have reference to State action exclusively, and not to any action of private individuals. Sec. 641 of the Revised Statutes was also intended for their protection against State action and against that alone. *Re Virginia*, 229.

The Constitution and laws of Virginia do not exclude colored citizens from service on juries. The defendant in this case moved in the State court that the venire be so modified that one third or some portion of the jury should be composed of his own race. *Held*, that the denial of that motion was not a denial of a right secured to him by any law providing for the equal civil rights of citizens of the United States, or by any statute, or by the Fourteenth Amendment. A mixed jury in a particular case is not essential to the equal protection of the laws. It is a right to which any colored man is entitled, that in the selection of jurors to pass upon his life, liberty or property, there shall be no exclusion of his race, and no discrimination against them because of his color. But that is a different thing from that which was claimed as of right and denied in the State court, viz., a right to have the jury composed in part of colored men. *Id.*

Wharfage fees by municipal corporation not unconstitutional, 296.

Section 643 of the Revised Statutes of the United States which declares that "when any civil suit or criminal prosecution is commenced in any court of a State against any officer appointed under, or acting by authority of any revenue law of the United States now or hereafter enacted, or against any person acting under or by authority of such officer, on account of any act done under color of his office or of any such law, or on account of any right, title or authority claimed by such officer or other person under any such law, * * * the said suit or prosecution may, at any time before the trial or final hearing thereof, be removed for trial into the circuit court next to be holden in the district where the same is pending, upon the petition of such defendant to said circuit court," etc., is not in conflict with the Federal Constitution. *State v. Davis*, 251.

Constitutionality of the Federal election laws, 256.

Statute authorizing attachment against property of non-resident without an undertaking not unconstitutional, though as to residents an undertaking is required, 299.

Statutes imposing a greater penalty for a second or third offense of the same character than that imposed for the first offense, do not violate the constitutional provision which forbids putting one twice in jeopardy for the same offense, 317.

Baltimore city ordinance requiring wharfage fees from vessels loaded with products of other States, unconstitutional, 396.

Federal tax on circulating notes of municipalities constitutional, 396.

Establishing a county seat at certain place not a contract so as to prevent its removal, 431.

The equality clause in the first section of the Fourteenth Amendment viz., that which prohibits any State from denying to any person the equal protection of the laws, contemplates the protection of persons, and classes of persons, against unjust discrimination by a State; it has no reference to territorial or municipal arrangements made for different portions of a State. *Howman v. Lewis*, 396.

It was not intended to prevent a State from arranging and parceling out the jurisdiction of its several courts as it sees fit, either as to territorial limits, subject-matter, or amount, or the finality of their several judgments or decrees. *Id.*

Each State has full power to make political subdivisions of its territory for municipal purposes, and to regulate their local government, including the constitution of courts, and the extent of their jurisdiction. *Id.*

A State may, if it pleases, establish one system of law in one portion of its territory, and another system in another, provided always that it does not encroach upon the proper jurisdiction of the United States and does not abridge the privileges and immunities of citizens of the United States, nor deprive any person of his rights without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws in the same district. *Id.*

By the Constitution and laws of Missouri a court called the St. Louis Court of Appeals has exclusive jurisdiction in certain cases of all appeals from the circuit courts in St. Louis and some adjoining counties; the Supreme Court has jurisdiction of appeals in like cases from the circuit courts of the remaining counties of the State: *Held*, that this adjust-

CONSTITUTIONAL LAW—Continued.

ment of appellate jurisdiction is not forbidden by anything contained in the Fourteenth Amendment. *Id.*

The section of the act of March 1, 1875, (18 Stat. 336), which enacts that "no citizen, possessing all other qualifications, which are or may be prescribed by law, shall be disqualified for service as grand or petit juror in any court of the United States, or of any State, on account of race, color or previous condition of servitude; and any officer, or other person, charged with any duty in the selection or summoning of jurors, who shall exclude or fail to summon any citizen for the cause aforesaid, shall on conviction thereof be deemed guilty of a misdemeanor, and be fined not more than \$5,000," examined, and *held* to be authorized by the Thirteenth and Fourteenth Amendments of the Constitution, for the enforcement of which Congress is given power to pass appropriate legislation. *Ex parte Virginia*, 406.

The exemption by statute of directors in a railroad company from jury service is unconstitutional, as granting a peculiar privilege or exemption which is not extended to the members of the community generally. *Neely v. State*, with note by Hon. J. O. Pierce, 428.

Do the provisions of the Missouri Constitution that the jury may consist of less than twelve men contravene the United States Constitution. *Query*, 338; answers 398, 437.

Statute giving double damages against railroads for killing stock, constitutional, 433.

Act providing that promises, loans, etc. to building associations shall not be deemed usurious, unconstitutional, 434.

Statute forbidding the reservation of seats at public exhibitions, upon sale of tickets of admission, after opening of doors, unconstitutional, 446.

Taking effect of statute affecting particular county may constitutionally be made dependent upon popular vote of that county, 446.

In 1867, the State of Mississippi granted a charter to an association, under which the latter for a consideration was given the right for a term of twenty-five years to maintain a lottery. In 1888, the people adopted a new Constitution, which provided that lotteries should be illegal. *Held*, that the right granted in 1867 was thereby withdrawn. A legislature can not bargain away the police power of the State. Lotteries are the subject of that power. The contracts which the Federal Constitution protects are those which relate to property and not governmental rights. The right to stop a lottery is governmental. *Stone v. State*, 449.

Statute forbidding removal of body from graveyard without permit, constitutional; Chinese burials, 478.

CONSTRUCTION.

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CONTEMPT.

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Juror in Federal court is guilty of contempt in corruptly conferring with party to a suit during the trial, it appearing that the court had expressly forbidden the jury from conversing with any one regarding the case, 315.

That he would be guilty of contempt, even if no such directions were given, *semble*, 315.

In proceedings for criminal contempt, the answer of the respondent, if credible and consistent, must be taken as true, 315.

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CONTRACTS.

Breach of Promise of Marriage.

Damages for seduction not allowed, where promise is in consideration of illicit cohabitation, 155.

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Evidence as to the effect of the breaking of the promise upon the feelings of the plaintiff, competent, 176.

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On trial, evidence not admissible that plaintiff is unwilling and defendant willing then to marry each other, 176.

Opinions of witnesses as to whether plaintiff was attached to defendant, admissible, 464.

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Consideration.

Action on subscription paper will not lie to recover amount of subscription to rebuild an academy, there being no other act on part of subscriber to encourage the rebuilding, 46.

A gratuitous subscription to a charitable object can not be enforced, unless the promisee has done something in reliance upon it; the fact that others were led to subscribe is not sufficient, 360.

Grant of license to sell a patented article if the patent is void, does not furnish valid consideration for promissory note given for purchase price of license; *aliter* if patent is simply unprofitable, 56.

Good will of business is sufficient consideration for a contract, 216.

A promise not made in accordance with law is no consideration for a contract, 275.

Illegal Contracts.

Contract by attorney to turn over to another accounts in his hands invalid, 16.

Agreement not to practice law in certain town not invalid, 16.

Contract by officer to give subordinate an appointment void, 155.

An agreement to parcel out the stevedoring business of a port among the parties to it, is not invalid, though the effect of it might be to create a partial restraint upon the power of the parties to exercise their trade, 174.

A clause in such an agreement providing that if either of certain merchants named in the agreement should refuse to allow the stevedoring of any ship to be done by the party entitled to it under the agreement and should require one of the other parties to do it, such party so required should give an equivalent to the party who lost the stevedoring, to be determined by arbitration: *Held*, not unenforceable, 174.

But a provision that in the case of ships passing out of the hands of the firms named in the contract, and being chartered or loaded by other merchants who should not choose to employ the stevedores entitled under the agreement to the work, none of the parties thereto shall be allowed to do the stevedoring of such ships: *Held*, void, as against public policy, 174.

Option Sales; articles by Hon. J. O. Pierce, 221, 241.

In restraint of trade; restraint must not be unreasonable, 259.

Contract to procure appointment to public office void, 299.

A conveyance of property was made to a railroad, under agreement that its depot should be erected there; agreement void as against public policy, 298.

Agreements in restraint of trade void, 432.

Conditional sale of property when a wager and void, 432.

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Contracts by Letter; article from *Solicitors Journal*, 63.

A agreed with B to construct an addition to his house, the price being a gross sum. After the work was partly done the house and addition were destroyed by fire without the fault of either party. *Held*, that A could not recover for the value of the work done prior to the destruction of the building, 135.

Where a vendor rescinds a contract of sale of goods made upon credit and obtained by fraudulent representations of the vendee, he can not bring assumpsit to recover what the goods were reasonably worth, but is restricted to an action in tort, of trover or replevin. *Kellogg v. Turpie*, 245.

A subscription to a church is revoked by death of donor, 337.

To excuse the non-performance of a contract, the act of God must be of such a nature as to render its performance impossible; that it renders it difficult or dangerous is not enough. Therefore, where a teacher was hired for a certain term, during a portion of which the school was suspended on account of the prevalence of small-pox: *Held*, that he was entitled to recover for the full time. *Dewey v. Union School District*, 426.

M agreed to thresh N's crop at forty cents an acre. Having threshed only one-third of the crop he refused to complete his contract, and after the time fixed for its completion, brought suit for his services. *Held*, that M was entitled to recover at the price fixed in the contract, less the damages sustained by N by reason of its breach. *McMillan v. Mallory*, 447.

The withdrawal of an offer, made and accepted by letters sent through the post, is inoperative, if the notice of withdrawal does not reach the person accepting until after the letter of acceptance has been posted, unless authority has been given to notify a withdrawal by merely posting a letter. *Byrne v. Van Tienhoven*, 451.

CONTRACTS—Continued.

The defendants, in Cardiff, on October 1st, by letter offered to sell to the plaintiffs in New York, 1,000 boxes of tin plates, subject to their reply by cable on or before the 15th of October; "terms four months bankers' acceptances against shipping documents." The plaintiffs received the letter on the 11th of October, and the same day accepted it by cable. Meanwhile, on the 8th of October, the defendants wrote revoking their offer; and this letter reached the plaintiffs on the 20th of October. *Held*, that the revocation was inoperative, and the contract was complete on the 11th of October. *Id.*

Though the acceptances sent by the plaintiffs were not bankers' acceptances as stipulated by the contract, yet there being a continuing refusal on the part of the defendants to perform the contract, the plaintiffs were entitled to sue for its breach. *Id.*

Contractor and subcontractor; equities under forfeiture; retained percentage, 456.

Statute of Frauds.

Applies only to contracts not to be performed on either side within a year, 16.

Sale of stock is within statute; shares are "goods, wares and merchandise," 316.

A promise by the president of a bank to a depositor that if the latter will not check out his funds but permit them to remain in the bank, the former will pay the total deposit if the bank should close, is within the statute, 360.

Parol promise to pay debt of another when not within statute, 436.

A written guaranty upon note, though referring to note, and made at same time, and constituting ground of credit given to maker, is void if it fails to express consideration, 456.

COPYRIGHTS AND TRADE-MARKS.

Copyrights.

Right to pirate American articles in an English work; the *Encyclopaedia Britannica* case, 98.

The common law copyright of an author; jurisdiction, 319.

Effect of license to make engraving of oil painting, 396.

Trade-marks.

Titles of Newspapers and Books; articles from *Solicitor's Journal*, 82, 104, 123.

Trade name; circulating library; advertisement of proposed name of projected business, 295.

Whether words in common use can be appropriated as trade-marks, 398.

Where party uses word to defraud public he can not have protection, 398.

Letters of the alphabet can not be appropriated as a trade-mark, 495.

CORPORATIONS.

Action for assault and battery will not lie against corporation, 46.

Upon dissolution of corporation, if receiver not appointed, president and directors are trustees of creditors and stockholders, and actions must be prosecuted in their names, 57.

Under statute making directors liable for debts above certain amount, protesting directors not liable, 97.

S. bought shares in a National bank and caused them to be transferred to E, who was in his employ, S remaining the real owner. *Held*, that S was liable as a stockholder upon the failure of the bank, 113.

Power of board of trade to establish rules governing members, 157.

Evidence of seal of president, 177.

Any person served with process as the representative of a defendant corporation may plead in abatement in his own name, that the corporation is extinct; or he may make the defense by motion to dismiss the suit, or by suggestion of his attorney on the record, supported by affidavit of the facts. *Kelley v. Mississippi Cent. R. Co.*, 286.

Any person so served with process may deny by plea in abatement that he sustains any relation to the corporation which authorizes service by process on him as the representative of the corporation, *Id.*

Power of corporation to hold land in another State, 356.

Unincorporated association; liability of member for debts; double liability, 377.

Party induced to purchase shares by fraud can not after its discovery retain the shares and sue for damages, 396.

Benevolent Society; right of action against member; implied contract; condition precedent, 417.

By-law of bank providing that "no transfer of stock shall be valid so long as the holder should be in

CORPORATIONS—Continued.

arrear to the bank or in any manner indebted to it," does not include indebtedness arising from original subscription on which stockholder has paid all called for, 433.

Reasonableness of by-law a question for the court, 436.

Names of Companies; articles from *Solicitor's Journal*, 461, 481.

Liability of corporation on contract made by officers before incorporation, 476.

The words "perpetual succession" used in the charter of a private corporation, without further words of limitation or restriction, mean an indefinite duration, and are not to be understood in the sense of continuous or uninterrupted succession. The existence of such corporations is not limited to the term fixed by the general statute on the subject of corporations. *Fairchild v. Masonic Hall Assn.*, 485.

The individual liability of a stockholder is fixed by the law in force at the time he becomes such, and can not be changed by subsequent constitutional or legislative enactment. *Id.*

Under the statutes of Missouri, no double liability was imposed upon one who, in 1864, became a stockholder in a corporation organized in 1853. The section in the statutes of 1845 creating such liability was expressly repealed by the revision of 1855; and the corresponding section in the statute of 1855 applied by its terms only to corporations created after that revision took effect. *Id.*

Creditor's bill will lie against delinquent subscribers to stock, 495.

COUNTERCLAIM.

[See PLEADING AND PRACTICE.]

COVENANTS.

[See DEEDS.]

CRIMES.

[See the various special titles.]

CRIMINAL EVIDENCE.

Can human and animal blood be distinguished in case of blood stains, 183.

Disqualification of witness from conviction of infamous crime, 219.

On a trial for murder the prisoner offered to prove the character of a witness for the prosecution two years before the trial. There was no evidence of character of witness at the time of the trial nor any effort made to prove that it was not then good. The trial court excluded the offered evidence. *Held*, no error, 237.

Confession without proof of the *corpus delicti* is not sufficient to support a conviction for felony, 239.

Prisoner can not be required as a witness to testify whether he has ever been convicted of an infamous crime which is not charged in the information, for the purpose of subjecting him to punishment as for a second offense, 317.

Right of witness to decline answering whether he has been convicted of an infamous offense, is personal, 317.

Error to allow wife to testify against husband even though she do so willingly, 335.

Evidence of character of defendant, 335.

Meaning of "reasonable doubt," 418.

Statements made by prisoner on former trial admissible, 476.

CRIMINAL FRAUD.

A statute, called the Banking Act, required a statement of the affairs of banks to be made by the president or other officer to the Government. The form of return prescribed certain headings, under which the liabilities and assets should be classed respectively. The defendant, a bank president, was indicted for making a wilfully false and deceptive return. The falsity of the return consisted in the improper classification of the assets and liabilities. *Held*, that the question as to whether the items had been improperly classified was a question of fact for the jury and not one of law for the court. *Queen v. Hincks*, 127.

On an indictment against a bank president for making a false return of the affairs of the bank, the jury may infer a criminal intent on his part from all the circumstances of the case. Direct proof of such intent is not required, but from the position of the accused and the nature of the transactions themselves, the inference may properly arise that he was aware of the irregularities charged. *Id.*

CRIMINAL LAW AND PROCEDURE.

By direction of the prosecutor thieves were informed that on a given night he would be away from home; the thieves came and were taken in the act. *Held*,

CRIMINAL LAW AND PROCEDURE—Continued.

that the prosecutor did not consent to the taking, and the thieves were properly convicted, 15.

It is within the power of a legislature to make the same act punishable in two ways—by indictment under the State law or by suit in the name of a township to recover a penalty. A conviction or acquittal in such case under either statute would be no bar to a conviction under the other. *Wragg v. Penn Township*, 87.

The provisions of sec. 221 of the criminal code (ch. 38, Rev. Stats. of 1874), which make the obstruction of a highway a public nuisance punishable by indictment, are not inconsistent with and do not repeal the provisions of sec. 58 of ch. 121 (Rev. Stats. of 1874), making the same act punishable by suit in the name of a township to enforce a penalty. *Id.*

It is error to permit an officer in charge of a jury to be present during their deliberations, even though he does not speak to them, and it does not appear that any harm has resulted therefrom. *People v. Knapp*, 106.

When "treating," the jury will vitiate a verdict, 120.

When jury allowed to take papers to the jury room, 120.

An indictment can not be set aside on the ground that the grand jury was not properly selected, summoned or impaneled, 155.

The death of a grand juror does not dissolve the grand jury, notwithstanding the statute fixes the number of the jury in the first instance, 153.

An indictment found by twelve of the jurors is good, although there be less than nineteen grand jurors at the time of finding an indictment, 155.

Conviction of Rev. Mr. Cowley for gross neglect of a child, 179.

State not restricted to witnesses whose names are on back of indictment, 186.

Conviction for breach of the peace a bar to prosecution for malicious wounding, 218.

Where jury return a verdict of guilty on two inconsistent counts, State can not *not. pros.* one in order to have the other stand, 236.

A verdict in a criminal case may be received in the absence of the prisoner's counsel, the prisoner himself being present, 239.

When an act in general terms is made indictable, a criminal intent need not be shown, unless from the language or effect of the law a purpose to require the existence of such intent can be discovered. *Halstead v. State*, 290.

Where the duty prescribed was a simple one and easily performed, *Held*, that there was no ground on which the court could import into the act a requirement that to constitute guilt an intentional violation of the law must be shown. *Id.*

Accused may show that at time crime was committed he was physically incapable of committing it, as intoxicated, 317.

Trial court may instruct jury not to find prisoner guilty on unsupported testimony of accomplice, 317.

Order of evidence discretionary with court, 357.

B was indicted for perjury in testifying to false *alibi* on trial of W. M., a juror, had no opinion on the guilt of B but had formed one on the guilt of W. *Held*, that he was incompetent, 376.

A merchant, unmarried, who has a rented store in which he sleeps is not a "householder," and is not qualified as a juror, 376.

A prisoner on trial is not obliged in order to get rid of an incompetent juror held competent by the court, to resort to his peremptory challenges, 376.

Statute forbidding receiving lunatics into unlicensed house; on indictment for violation, knowledge of defendant immaterial, 416.

When court should appoint assistant prosecutor, 432.

Grand jury may be summoned from by-standers, 434.

Eligibility for office may be taken away as punishment for crime, 464.

Where can the English short forms of indictments be found? Query, 378; answer, 398.

Selling unwholesome provisions indictable at common law, 463.

A person accused of crime, after verdict against him, has a right to the solemn opinion of the judge before whom the cause was tried, after a careful hearing of all that may be alleged against the justice of the verdict, that it ought to stand. *Ohms v. State*, 465.

Where, therefore, the evidence upon which a verdict of guilty of murder in the first degree was found was not overwhelming, and the accused was unable to obtain a proper hearing of his motion for a new trial, because it was inconvenient for the trial judge (who sat in place of the judge of the circuit in which

CRIMINAL LAW AND PROCEDURE—Continued.

the trial was had) to remain and hear the same, and such judge erroneously supposed that the motion might properly be heard by the judge of the circuit, this court reverses the judgment and orders a new trial, without determining whether the verdict was against the weight of evidence or whether there was error in the instructions given to the jury. *Id.*

The fact that the accused failing, after due effort, to get his motion heard by the trial judge, subsequently moved the judge of the circuit for the same relief, does not waive or cure the error above stated. *Id.*

All witnesses whose names are on indictment need not be examined by State, 496.

Jury should be instructed as to punishment when, 496.

Plea of guilty under promise or expectation of lowest punishment, 497.

State can not show that accomplice testifying against prisoner is still under indictment, 497.

CUSTOMS.

[See USAGES AND CUSTOMS.]

DAMAGES.

Miscellaneous.

In an action upon a promissory note the defendant offered to prove, as a set-off, that the plaintiff had agreed, upon a given consideration, to satisfy a judgment which he held against the defendant; that he had failed to do so, and that as a consequence the defendant had been unable to raise money upon his property, whereby he had suffered loss. *Held*, that the damages were too remote, 194.

Plaintiff's intestate while at work on an insecure platform of the defendant, fell twenty feet to the ground, became instantly unconscious and died in thirty-six hours. *Held*, that damages could not be awarded for his mental suffering during the fall, 239.

An instance of damages increasing in amount with successive new trials, 339.

Measure of.

In actions for negligent injuries, mental suffering an element of, 14.

In action for breach of agreement to furnish pedigree of cattle, 99.

In an action for damages resulting from personal injuries, defendant is liable for the reasonable value of the medical attendance, care and nursing made necessary by the accident, though such services may, as between the plaintiff and the person rendering them, have been gratuitous, 154.

Where in action for personal injuries the evidence shows the employment of a physician, testimony as to the reasonable value of his services is competent, though they had not been paid for, and it does not appear that he claims any compensation for such services, 154.

No Immediate Market for Rejected Goods; Measure of Damages; article from *Law Times*, 223.

Damages against Railroad Companies; article from *Solicitors Journal*, 294.

DAYS.

The law of leap year, 138.

DECEIT.

When a creditor has been induced by deceit of his debtor to accept a part of his debt in full payment, the unpaid portion of the sum due is the measure of damages in an action on the case for the deceit. *Buck v. Leach*, 85.

A master of a brig, who had been sailing her on shares, represented in a letter to the owners that he was indebted, on a settlement of his accounts, to them in a large sum named, "besides losing his time;" whereupon a claim for a compromise was yielded to: *Held*, that in action by the owners for deceit, a verdict for the owners is justified if the representations were proved to have been false in fact, known by the defendant to be so, and if made with a design to deceive the plaintiffs, provided they, acting at the time with due care, were deceived and induced to settle as they did, when they otherwise would not have done so. *Id.*

DECLARATIONS.

[See EVIDENCE.]

DECOY.

[See CRIMINAL LAW AND PROCEDURE.]

DEEDS.

To create an equitable estate of inheritance, under a deed conveying land to a trustee, words are necessary implying an inheritable quality in the estate of *cestui que trust*. Where such a deed contemplates no estate beyond the life of the *cestui que trust*, the ben-

DEEDS—Continued.

eficial estate terminates at her death, and the land reverts to the grantor and his heirs, although the deed in trust vested the fee simple title in the trustee and his heirs. *Starr v. Kealhofer*, with note by Hon. J. O. Pierce, 8.

A covenant runs with the land when either the liability for its performance or the right to enforce it passes to the assignee of the land itself. In order that it may run with the land, its performance or non-performance must affect the nature, quality or value of the property demised, independent of collateral circumstances, or it must affect the mode of enjoyment, and there must be a privity between the contracting parties. *Wiggins Ferry Co. v. Ohio etc. R. Co.*, 166.

Covenants running with land; *lex loci situs*, 335.

Power of heirs to impeach conveyances, 356.

Covenant to discharge mortgage; breach, 358.

Where a contract for the sale of land is executed by a deed of conveyance in which, by oversight, a material part of the land is not embraced, and the vendor has no legal title to that part, but only at most an equitable right to obtain it, the vendee is entitled to a rescission, unless the title is perfected before decree. The land lying in another State, the rescission will be upon condition that the complainant make a deed of re-conveyance, within a reasonable time, duly probated for registration according to the laws of that State. *Winfrey v. Drake*, 445.

DEPOSITIONS.

[See PLEADING AND PRACTICE.]

DIRECTORS.

[See CORPORATIONS.]

DISORDERLY HOUSE.

A canvas tent may be a "disorderly house," 239.

DISTURBING THE PEACE.

[See RIOT.]

DIVORCE.

[See MARRIAGE AND DIVORCE.]

DOGS.

[See, also, MUNICIPAL CORPORATIONS.]

Dog which attacks persons or kills sheep may be killed by any one as a nuisance, 464.

DONATIO MORTIS CAUSA.

[See WILLS.]

DOWER.

[See HUSBAND AND WIFE.]

DURESS.

A note executed under duress is only void as between the original parties and those having notice, and a mortgage given to secure a negotiable note is open to such defenses only as may be made to the note. *Beals v. Neddo*, 187.

EASEMENTS.

A deed to a railroad company conveying no land but only the right to construct, maintain and use in, through, upon and over certain lands all such railroad tracks, depots, warehouses, etc., as the company shall find necessary or convenient for transacting its business, and to keep thereon without disturbance all property belonging to or in the possession of the company, to have and to hold the said rights and easements so long as the same shall be used for such purposes, and for no other, even forever, passes only an easement which is a freehold, of inheritance though only a base or qualified fee which may be defeated. *Wiggins Ferry Co. v. Ohio, etc. R. Co.*, 166.

Where a ferry company granted certain rights or easements to a railroad company over two tracts of land, which was assumed to be distinct property from the ferry franchise, in consideration of which the railroad company covenanted with the ferry company always to employ the latter to transport over the Mississippi river all property and persons which might be taken across the river either way by the railroad company to or from Bloody Island, either for the purpose of being transported on the railroad of the grantee, or having been brought to said river upon said railroad, so that the ferry company its representatives and assigns, owners of the ferry, should have the profits of the transportation, etc.: *Held*, that as the covenant was for the benefit of the owners of the ferry, and not for the owners of the land out of which the easement was granted, a separate and distinct property, the ferry company could not maintain an action at law against a party succeeding to the rights, property and franchise of the railroad. *Id.*

ECCLESIASTICAL LAW.

[See RELIGIOUS SOCIETIES AND PERSONS.]

EDITOR.

[See NEWSPAPERS.]

EJECTMENT.

Only rents and profits for three years can be recovered in action of, 57.

May be brought against co-tenant, 57.

Former judgment in ejectment no bar to subsequent action, 157.

When husband must sue alone for wife's land; when death of husband abates action, 157.

Evidence of claim of ownership, 153.

Judgment in ejectment against tenant not binding in subsequent action by same plaintiff against landlord, 156.

A party leaves home, and not being heard from for a long time a guardian is appointed for his children, and his land is sold. He afterwards returns. Can he maintain ejectment against purchaser? Query, 318; answer, 437.

ELECTIONS.

Canvass of returns; newly organized counties; term of officers, 137.

Certificate of election *prima facie* evidence of title, 137.Pendency of action between contestants no defense in an action in the nature of *quo warranto*, brought by the State against officer holding over, to oust him from said office, 137.The returns of an election made to the canvassing board showed a vote of 2,947. There were in fact only about 800 legal voters in the county. On application for a *mandamus* to compel the board to canvass these returns and declare the result: *Held*, notwithstanding the fact that the duties of the board are ministerial, a *mandamus* will be issued. *Held, further*, that returns so grossly and manifestly untrue have no force as evidence, and have no value in any proceeding to determine the result of the election. *State v. Stevens*, 188.

Promise of candidate to pay money into treasury a bribe when, 477.

EMBEZZLEMENT.

Under indictment charging embezzlement of money conviction can not be had for embezzling county orders, 217.

Embezzlement by a bank cashier is not an offense at common law. Therefore, the punishment provided by a State law for embezzlement by any "officer," director or member of any bank, "can not be imposed upon a National bank cashier, his crime being punishable only under the United States statutes. *Com. v. Ketner*, 545.**EMINENT DOMAIN.**Owner of land can not recover value of improvements put on his land by trespassing railroad, 101, *contra*, 316.

Evidence of damage; opinion, 116.

In proceeding by railroad, record of former action of trespass and judgment not admissible, 257.

If owner of land which has been unlawfully appropriated can recover land itself, he can not maintain action for value of land and damages, 296.

EQUITY PRACTICE.

[See PLEADING AND PRACTICE.]

ESTATES.

[See DEEDS.]

ESTOPPEL.

A county by bringing an action to set aside a conveyance alleged to have been obtained by fraud, is not thereby estopped from levying taxes on said land, 16.

Estoppel by Contract; article from *Law Times*, 201.Doctrine of estoppel *in pais* applicable to municipal corporations, 358.**EVIDENCE.**

[As to evidence in criminal cases, see CRIMINAL EVIDENCE and the various titles.]

Declarations; see, also, *Common Carriers*.The *Res Gestæ* of an Accident; article from *Daily Register*, 23.

Judgments and Decrees.

Is judgment of probate court competent evidence of heirship in collateral suit? Query, 437; answer, 498.

EVIDENCE—Continued.**Opinion Evidence.**

Testimony of owner as to value of clothing worn by her, 33.

Proof of Handwriting by Comparison; articles by Hon. Asa Iglehart, 121, 141.

Unwritten law of a foreign country must be shown by oral testimony of witnesses skilled therein and the published reports of the decisions of such country, and not by historical works, 460.

Miscellaneous.

When books of account admissible, 32.

In an action brought by A against B and C, claiming to be indemnified by them or one of them in respect of certain shares in a company, it was sought during the hearing of the action to prove that the shares were purchased for B by his stockbroker D, who was dead, and the day-book of the stockbroker which contained an entry made by him relating to these shares, was tendered in evidence. *Held*, that this entry was not admissible as evidence either as a declaration against pecuniary interest, or as an entry made in the ordinary course of business by a person whose duty it was to make it. *Massey v. Allen*, 146. Existence of corporation may be proved by reputation, 275.**Parol to Vary Writings.**

Contract under seal may be varied by parol, 14.

Where a note on its face does not disclose the relationship of principal and surety between makers, competent to prove by parol that such relationship existed, 89.

Explanation of contract by parol evidence, 93.

In suit on promissory note given for price of personal property, parol evidence of warranty and breach admissible, 434.

Privileged Communications.

Rule as to, does not excuse an attorney from testifying in regard to an agreement for settlement made by him with the opposite party, at the request of his client, 99.

Primary and Secondary.

Contents of lost letters when not admissible; what search necessary, 477.

Relevancy.

In action for wrongfully causing death, proof of threats made by deceased when irrelevant, 156.

In action by the personal representative to recover damages for the benefit of the next of kin, the poverty or wealth of the latter is irrelevant, 348.

In action against contractor for injuries occasioned by defective bracing of trench, contract between defendant and city that the trench should be securely braced, irrelevant, 417.

Witnesses.

Mental unsoundness of witness may be shown, 154.

Witness introduced to prove conversation not bound to give exact words, 197.

A witness can not refuse on the ground of self-crimination, to answer a question relating to an offense barred by the statute of limitations, 239.

Testimony of witness on former trial since deceased, when admissible, 358.

A writing examined by a witness for the purpose of refreshing his memory, need not, to be admissible, be in his own handwriting, 434.

EXECUTIONS.

[See, also, JUDICIAL SALES.]

What necessary to render levy valid, 33.

Where a judgment is ambiguous, and giving it one construction to which it is fairly open, the plaintiff is not entitled to an execution thereon, the clerk will not be compelled by *mandamus* to issue such execution, 317.

Seat in stock exchange not subject to execution, 500.

Can execution be void in part and valid in part? Query (9 Cent. L. J. 439), answer, 77.

EXECUTION SALES.

[See JUDICIAL SALES.]

EXECUTORS AND ADMINISTRATORS.

Final settlement under Indiana statute does not include last report of outgoing executor, 97.

Judgment against deceased not judgment against administrator until revived, 116.

Delay in exhibition of demands; limitation of revivor, 116.

Judgment against administrator without notice void, 378.

Liability of executors for bonds stolen from vault, 431.

Sale by administrator to himself void, 455.

EXEMPTIONS.

[See HOMESTEADS AND EXEMPTIONS.]

EXPERTS.

[See EVIDENCE.]

EXPRESS COMPANIES.

[See COMMON CARRIERS.]

FACTORS.

[See PLEDGE.]

FALSE PRETENSES.

What necessary to sustain conviction for, 115.

An indictment under a statute which provides that "whoever designedly, by a false pretense, or by a privy or false token, and with intent to defraud, obtains from another person any property * * * shall be punished," etc., will not lie against one who by false pretenses obtains the consent of the city to the entry of the judgment against it in an action then pending in his favor, and receives a sum of money in satisfaction of such judgment. *Com. v. Harkins*, 425.

FALSE REPRESENTATIONS.

A vendor of land is liable for misrepresentations as to title as well as to quality, 239.

Action lies for false representations not amounting to a warranty, 434.

Duty of one to whom party makes inquiries concerning another, 457.

FEDERAL COURTS.

[See PLEADING AND PRACTICE; REMOVAL OF CAUSES.]

FIRE INSURANCE.

[See INSURANCE LAW.]

FIXTURES.

Banker's safe built into wall a fixture, 79.

A church organ is a fixture, 99.

FORCIBLE ENTRY AND DETAINER.

Possession by inclosing lot with wire fence; destroying fence by another amounts to, 56.

FORECLOSURE.

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FORGERY.

Signing check with fictitious name not, 173.

Alteration by payee of note of memorandum of payment indorsed on back thereof by himself not signed, not forgery, 434.

FORMS OF ACTION.

[See PLEADING AND PRACTICE.]

FRAUD.

[See CRIMINAL FRAUD.]

FRAUDULENT SALES AND CONVEYANCES.

When must be attacked under Kentucky statute, 31.

GAME LAWS.

Possession of birds killed in another State, 353.

GAMING.

Participants in game of "poker" not jointly liable for money lost by one, 75.

Playing billiards where the loser of the game pays a certain sum to the owner of the table for its use is within the statute against gambling, 434.

Statute providing that any person who lost money to another may recover it, will not include the proprietor of a faro bank who has lost money to persons betting against the bank, 440.

GUARANTY.

[See SURETYSHIP AND GUARANTY.]

GUARDIAN AND WARD.

Mandamus will lie to compel circuit court to recall moneys belonging to infants paid over to general guardian without security, 32.

Guardians' deed not presumptive evidence that directions have been complied with, 57.

HOMESTEADS AND EXEMPTIONS.

Ante-nuptial agreement will not bar claim of widow and children to homestead, 26.

That homestead occupied by wife and family of intestate is conveyed will not affect their right to its occupancy, 57.

Who is a "head of a family," 74.

Owner may devote part of property exempt to any use he chooses without losing right, 102.

HOMESTEADS AND EXEMPTIONS—Continued.

Owner of legal subdivision of land precisely equal to statutory measure of homestead right, whose dwelling-house is situate upon such subdivision, and who has made no different selection, is held to have selected that subdivision for his homestead, although he also own adjoining lands from which he might have selected his homestead in part, 156.

The constitutional provision that the homestead (in Kansas) can only be alienated "by the joint consent of husband and wife," is not a defense to a suit brought to foreclose a mortgage given to secure negotiable paper, which has passed into the hands of a purchaser for value before maturity without notice of any infirmity in the paper, notwithstanding the wife's signature and acknowledgment were procured by threats and menaces amounting to legal duress. *Beals v. Neddo*, 187.

Where the relation of husband and wife exists, the separate deed of the former of his homestead conveys no title, notwithstanding the wife has never been a resident of the State and has been abandoned by him without cause, 317.

Appraisal and selection of property is for a court of law; equity has no jurisdiction to enjoin sheriff, 357.

Amount of exemption under Indiana assignment law, 455.

Lawyer's library to what extent exempt, 477.

Printer's implements "tools of a mechanic" within exemption law, 495.

Does waiver of exemption as to one creditor apply also to others? Query, 298; answer, 338.

Is property traded for exempt property also exempt? Query, 299; answer, 437.

May person owning exempt property mortgage or sell it? Query, 378; answer, 478.

HOMICIDE.

Murder in the commission of a felony; letters on the subject from S. W. Williams Esq. and Hon. J. H. Shanklin, 37.

Existence of malice always a question for the jury, 53.

Effect of independent causes contributing to death, 53.

Responsibility for unconscious killing; *somnambulism*, 75.

Proof of the *Corpus Delicti*; article from *Irish Law Times*, 165.

A loaded pistol is *per se* a dangerous weapon, 233.

Manslaughter by conductor of freight train in negligently causing collision; requisites of indictment, 316.

The prisoner's wife being discovered about eight A. M., in her room vomiting, her husband, who was at work in the field, was sent for, and shortly afterwards the manager of the plantation was sent to for medicine and assistance. To him she said that she felt as if she was on fire inside, and being asked what she had eaten, replied, "nothing but some bread and coffee at breakfast." She died the next day. Held that her answer as to her symptoms was admissible, as *res gestæ*, but not what she said as to the bread and coffee 356.

Deceased, who was in company with the prisoner C and S, was stabbed at night in the dark, and after walking one hundred yards fell, and soon after became insensible and remained so until the next morning. C. offered to prove that four hours after the return of consciousness, S was taken by the sheriff to the deceased, who recognized S as the man who stabbed him. Held, inadmissible. *State v. Curtis*, 370.

Willful murder with malice and premeditation, in a cool state of the blood, is murder in the first degree. Murder in the second degree is a willful killing committed with premeditation and malice, but without deliberation. *State v. Curtis*, with note 370, and see 458.

The words "malice aforethought" are equivalent to "malice" and "premeditation." "Deliberation" means "a cool state of the blood;" premeditation, in a cool state of the blood, is murder in the first degree. Willful killing, without deliberation, and without malice aforethought, constitutes manslaughter, 1d.

To constitute murder in the first degree, the killing must have been done willfully, deliberately, premeditatedly and with malice aforethought, and these different words must be defined by the instructions of the court. *State v. Sharp*, with note, 388.

An instruction which defines the word "deliberately" to mean intentionally, purposely, considerably, is insufficient. "Deliberately" means in a cool state of the blood, and a willful, premeditated killing is murder in the second degree, 1d.

A mistake in the name of the deceased is immaterial, unless regarded as prejudicial to the right of the defendant by the trial court, 1d.

HUSBAND AND WIFE.

An ante-nuptial agreement providing that each party shall retain his and her property free from the control of the other, will bar the right of dower in the wife on the death of the husband. *McGee v. McGee*, 26.

Real estate inherited before passage of enabling act can not be fixed with liability incurred prior thereto, 33.

Promissory note; judgment against wife's separate estate, 33.

A married woman may bring an action at law in respect of the separate property given her by statute, *Alt v. Meyer*, 107.

Married woman must plead incapacity when suit is brought or be afterwards estopped, 136.

Separate estate; suit by widow to divest title, 137.

A married woman having a separate estate may charge the same in equity by the execution of a promissory note as surety for her husband or another. *Williams v. Urnston*, 168.

Where a married woman having a separate estate executes a promissory note as surety for the principal maker, a presumption arises that she thereby intends to charge her separate estate with its payment. And a court of equity will carry such intention into effect by subjecting such estate to the payment of the debt, in the mode prescribed by the statute. *Id.*

Married woman delivering her note after passage of enabling act is bound thereby, though it is signed prior thereto, 196.

Acknowledgment of mortgage by wife; certificate need not be made in her presence, 357.

Implied Authority of a Wife to Bind her Husband; article from *Law Times*, 341.

Contracts of Married Women, articles by J. F. Kelly, 381, 401.

Correction of certificate of privy examination of married woman, may be made by the officer who took the examination after he goes out of office, 436.

When wife entitled to exclusive benefit of her services, 476.

Married woman not liable on contract for her benefit made with husband, 496.

Married woman's promissory note; agency, 497.

Does destruction of joint tenancy by statute apply to estates by entireties? Query, 298; answer, 318, 378, 437.

ILLEGAL CONTRACTS.

[See CONTRACTS.]

INCEST.

[See RAPE.]

INDICTMENTS.

[See CRIMINAL LAW AND PROCEDURE and the various special titles.]

INFANCY.

When exercise of power of direction by minor is void, 456.

INJUNCTION.

Where one man publishes that which is injurious to another in his trade or business, that publication is actionable, and being actionable will be stayed by injunction. *Thorley's Cattle Food Co. v. Massam*, 211.

A false statement that the advertisers "are alone possessed of the secret for compounding that famous condiment," which statement had caused certain persons to return goods to the plaintiff, restrained, *Id.*

Scemle, that the court would restrain such a publication, as being calculated to injure the plaintiff in his trade, even without proof of actual damage sustained, *Id.*

Injunction to Restrain Statements as to Former Employment; articles from *Solicitor's Journal*, 408, 424.

INSTRUCTIONS.

[See PLEADING AND PRACTICE.]

INSURANCE.**Fire.**

Construction of "vacant and unoccupied," 75, 476.

Waiver of forfeiture by demanding proofs; failure to return premium, 117.

Condition in policy as to explosive oils, 194.

Condition as to "sole, entire and unconditional ownership," 193, 276, 457.

Trustee process; right to repair, 235.

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Misrepresentations as to title and incumbrances, 433.

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Policy provided that insurer should not be liable for any loss occasioned by use of kerosene oil in any form. Insured went into barn at night, with kerosene lamp, to catch fowls, lamp exploded and barn was destroyed; insurer discharged, 440.

Contract of fire insurance one of indemnity only, 460. Special agent has no authority to extend time for payment of premium, 496.

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Construction of policy for benefit of wife; beneficial interest, 56.

Right of company to exhumation of body in a civil suit, 357.

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In action on marine policies, invoices and bills of lading not admissible to show loss, 111.

Mutual Benefit.

Money due to beneficiary subject to attachment, 117.

INTENT.

[See CRIMINAL FRAUD; CRIMINAL LAW AND PROCEDURE; REVENUE LAWS.]

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Assignee improperly retaining trust fund is chargeable with interest, 377.

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"Charitable purposes," 276.

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"Householder," 376.

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"Nonsuited," 433.

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"Person interested in the estate," 79.

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"Resident freeholders," 236.

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"Them," 34.

"Tools of a mechanic," 495.

"Vacant and unoccupied," 75, 476.

INTOXICATING LIQUORS.

[See "CIVIL DAMAGE" LAWS; LIQUOR LAWS.]

JOINT AND SEVERAL LIABILITIES.

[See, also, GAMING.]

The estate of a deceased joint debtor is not liable beyond what is provided by the statute. The statute of Indiana makes the estate of such a deceased debtor liable for a proportional part of the debt, except where the relation of principal and surety exists. If the decedent was a surety his estate is not liable at all, but if he was a principal his estate is liable for the whole debt. *Hudelson v. Armstrong*, 89, and see, 91.

This rule applies to actions brought against the administrator of a deceased, and the surviving joint debtor, as well as to claims filed against the decedent's estate. *Id.*

Under the statute of Indiana the estate of a deceased joint debtor is liable even where the relation of principal and surety exists, and the debtor whose estate is to be charged is the surety. *McCoy v. Payne*, 268. In trespass de bonis asportatis by two, does denial of title and right of possession put in issue their joint interest? Query, 437; answer, 498.

JUDGE DILLON.

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JUDGMENTS AND DECREES.

[See, also, EVIDENCE.]

One may by bill in equity dispute the authority of an attorney to appear for him, and show that a judgment founded upon such an appearance is absolutely void, 15.

When former recovery of damages for nuisance a bar to another action, 76.

Action against carrier by husband and wife a bar to action by husband alone, 93.

Judgment where amount of tax is described in numerals alone, void, 102.

Remedy of party against whom judgment has been recovered without notice, upon unauthorized appearance in his behalf of regular attorney of pecuniary responsibility, is by proceeding against attorney for damages, and equity will not restrain its enforcement by injunction, 279.

The payment by accommodation indorsers of a judgment at law against them in depreciated bank notes furnished by their principal, will be a satisfaction of a subsequent decree in equity against the principal for the same debt; and where the suit in equity was pending in the Supreme Court at the time of the payment, the defense may be made by cross-bill filed before or after the final decree of the Supreme Court. *Kirtland v. Mississippi etc. R. Co.* 346.

JUDICIAL SALES.

Who may purchase at execution sale, 376.

Place of sale where no court house, 398.

Mere inadequacy of price no ground for setting aside judicial sale, 456.

No ground for interfering with judicial sale, that creditor in whose favor sale is ordered, insists upon prior title to property, under which he claims, duly recorded and mentioned in pleadings in cause, 456.

What title gets a purchaser at an execution sale? Query, 118; answer, 338, 437.

Can one of several judgment debtors purchase at an execution sale? Query, 318; answer, 373.

JURISDICTION.

The Federal courts are not bound by decisions of State courts upon questions of general commercial law. *Oates v. First Nat. Bk.* 9.

Nor by construction of State statutes of limitation, 328.

Court may examine opinion of State court to see if Federal question is raised, 93.

National Bank can not sue in Federal Court outside of its district, 95.

The pendency of a prior suit in one jurisdiction is no bar to a subsequent suit in another jurisdiction, even though the two suits are for the same cause of action, 113.

When judgment is rendered against a corporation by one court while a suit is pending against the same corporation in another court which has for its ultimate object the dissolution of such corporation and the placing of its affairs in the hands of a receiver for settlement of its business and the distribution of its assets among its creditors, execution will not issue on such judgment. The judgment creditor must present his judgment for allowance to the court which has charge of the administration of the estate. *Levi v. Columbia Life Ins. Co.* 189.

That court which first obtains jurisdiction of the res or assets of a defendant, must proceed therewith uninterrupted by any other tribunal, 1d.

The effect of the institution of proceedings against an insurance company by the superintendent of the insurance department of Missouri, which look to the dissolution of the company and the winding up of its affairs, is to vest the court in which they are instituted with jurisdiction over its assets, and no other court will interfere with its control over those assets by execution, 1d.

Federal court has no power to grant *mandamus* when, 340.

A Federal court has no jurisdiction of a suit in which both parties are aliens, 193.

Though bill filed to remove assignee is dismissed, court obtains jurisdiction to require new bonds from him, 377.

JURY.

[See CRIMINAL LAW AND PROCEDURE; PLEADING AND PRACTICE.]

JUSTICE OF THE PEACE.

Has no authority to require from the applicant for a peace warrant a bond with security for the costs, 377. Can action of replevin be maintained for possession of docket of a justice of the peace where office has become vacant? Query, 298; answer, 318.

KIDNAPPING.

Construction of the United States law as to, 399.

LACHES.

Lien for purchase money of land sold at judicial sale when lost by, 418.

LANDLORD AND TENANT.

If landlord does not reserve right to enter premises to make repairs, fact that repairs are necessary does not justify his entry, 15.

A horse sent to livery stable to be fed and cared for not subject to distress for rent, 46.

Sufficiency of notice to quit, where an option is reserved, 71.

Though lease void under statute of frauds, tenancy may be created from year to year, 117.

What constitutes an eviction; entry of landlord to make unusual repairs without consent of tenant, 194.

S, who was the tenant of certain premises under a lease from L, purchased the same at a judicial sale without surrendering his lease or notifying L who was absent at the time from the State. *Held*, that the purchase could not be sustained, but would be presumed to have been made to protect the interest of L, and that the latter might redeem. *Lansman v. Draboss*, 305.

Under covenant for quiet enjoyment, landlord not liable for interruption by bursting of water pipes, 419.

Measure of damages on breach of parol agreement to lease, 436.

LARCENY.

Several articles taken at one time constitute but one offense, 117.

Indictment for larceny which describes the property as "one pound of meat" bad, 239.

What is not separate property of wife on indictment for larceny, 296.

In proving the value of personal clothing, on trial for larceny thereof, evidence should not be confined to current prices among dealers in second-hand clothing, 296.

Where separate property of wife has been stolen from family residence, such fact alone will not authorize conviction under indictment laying the property in husband, 296.

Possession of stolen goods does not raise presumption of larceny, 317.

When simple larceny is a misdemeanor, stealing from a shop a felony, a conviction for simple larceny of a hat is a bar to an indictment for larceny of the same from a shop, the stealing in both cases being one and the same, 356.

LAW BOOKS AND REFERENCES.

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LEAP YEAR.

[See DAYS.]

LEASE.

[See, also, LANDLORD AND TENANT.]

A lease is not a "conveyance" within that word as used in a statute, 460.

LESSOR AND LESSEE.

[See LANDLORD AND TENANT.]

LICENSE.

Subsequent licensee has priority over prior one who has not taken possession, 46.

LIENS.

In General.

The lien of an attorney on money due his client attaches to a judgment entered therefor, and can not be defeated by the creditor consenting to have the judgment set aside. *Brainerd v. Elmwood*, 46.

LIENS—Continued.

Railroads; equitable lien of county on earnings; priority between incumbrances, 417.
Attorney's lien on judgment, 431.

Mechanics' Liens.

Under Iowa statute lien of contractors of railroad prior to that of mortgagee, 14.

After a building contract was filed and the building was completed, the premises were conveyed *bona fide* by the owner to the contractor. *Held*, that a materialman had no lien for materials furnished in erecting the building, 140.

When petition may be amended, 136.

Certificate of architect how essential, 195.

Decree; distribution of proceeds; prior mortgage; equities, 258.

What are "previous incumbrances," within Illinois statute, 277.

An architect is not within the statute giving a lien to "every mechanic or other person," 360.

Railroad not a "structure" within Ohio statute, 378.

When lien can be filed for improvements made at instance of lessee, 436.

Effect of notice to mechanic that lessor will not hold himself liable, 436.

LIFE INSURANCE.

[See INSURANCE.]

LIMITATION.

Right of action of legatee against executor runs from time he was capable under the will of taking legacy, 15.

Contract for services; death of one party; when statute commences to run, 95.

In action against railroad for damage to abutting owner, 97.

Where a cause of action is concealed by fraud, the statute of limitations does not run in favor of the perpetrator of the fraud. *Johnson v. Roe*, 328.

The Federal courts sitting in equity are not bound by State statutes of limitation, and will not follow the construction given to them by the Supreme Court of the State when in conflict with well settled rules of equity jurisprudence. *Id.*

Limitation of real actions; seven years' possession under title bond, 418.

Illinois statute providing that "if the plaintiff be non-suited, * * * he may commence a new action within one year," refers only to involuntary non-suits, 433.

LIQUOR LAWS.

[See, also, "CIVIL DAMAGE" LAWS.]

In prosecution under, juror who thinks the trade in intoxicating liquors an illegitimate business not competent, 115.

Indictment for selling "one gill of liquor" not sufficient under statute declaring it unlawful to sell less than a quart, 115.

Indictment should negative all forms of license when, 136.

LOTTERIES.

[See, also, CONSTITUTIONAL LAW.]

The sale of "prize candy" in boxes, each box being represented to contain a prize of money or jewelry, and the purchaser selecting his box in ignorance of its contents, *held* to be a lottery, 239.

LUNATIC.

A lunatic can be sued at law for a debt which he contracted when of sound mind, and judgment therefor obtained against him. Lunacy is no sufficient ground in equity for declaring such a judgment a nullity. *Stigers v. Brent*, 473.

A summons in an action for debt was issued against a lunatic, and it appeared that the sheriff's deputy to whom the writ was delivered for service, called at the house of the defendant named therein, and was informed he was a lunatic and could not be seen. The sheriff's deputy thereupon explained the business in hand to the wife of the lunatic, then in charge of his person, and exhibited to her the summons. She referred him to her son, by whom the lunatic's estate was managed, whom the deputy saw and to whom he showed the writ, and afterwards returned it to the sheriff with an oral statement of what he had done. The sheriff returned the writ indorsed by him "summoned." At the following trial term two attorneys appeared for the defendant. In a proceeding at equity to set aside the judgment as null and void, it was *held* that under the circumstances a sufficient service of the summons was shown. *Id.*

LUNATIC—Continued

A lunatic defendant of full age properly defends by attorney, the law presuming him of sufficient capacity for that purpose. The appearance of the defendant in obedience to its command gave the court jurisdiction over the case. *Id.*

MALICIOUS PROSECUTION.

Prosecutor must show that all material facts were communicated to his counsel, 76.

MANDAMUS.

[See, also, OFFICERS AND OFFICES.]

Will not lie to compel performance of discretionary or judicial act, 97.

A *mandamus* does not lie to control judicial discretion, except when that discretion has been abused. But it may be used as a remedy where the case is outside of that discretion and outside the jurisdiction of the court or officer to which or to whom the writ is directed. One of its peculiar and more common uses is to restrain inferior courts and keep them within their lawful bounds. *Re Virginia*, 229.

Mandamus will lie in all cases when it affords an appropriate remedy for the enforcement of a legal right without regard to whether there may be some other adequate remedy or not. But it will not lie where right is doubtful, 233.

MANSLAUGHTER.

[See HOMICIDE.]

MARINE INSURANCE.

[See INSURANCE.]

MARRIAGE AND DIVORCE.

A divorce granted in Ohio against a citizen of New York domiciled and residing in the latter State throughout the pendency of the proceedings there, without appearance or actual notice, is of no effect in New York. *People v. Baker*, 171.

Although a State may adjudge the status of its citizens towards a non-resident and authorize such judicial proceedings as it may deem fit, such proceedings have no extra-territorial force. *Id.*

Nor will effect be given to such a judgment as that in this case on the principle of comity, although at the time of the rendition of the judgment the statute of New York provided for divorce against a non-resident without personal service. *Id.*

Custody of child; liability for maintenance, 177.

Singular verdict in English divorce case; wife found "not guilty" of adultery; "paramour found guilty," 198.

What is "habitual cruel and inhuman treatment," 335. Long delay may prevent divorce on account of impotency, 358.

In suit for divorce on ground of impotency, burden is on plaintiff both to prove the impotency and that it is incurable, 358.

In case of separation between husband and wife, the court in awarding the custody of an infant child to its father or its mother, will consult the welfare of the child rather than the rights of either parent. Hence, when it appeared that the character and circumstances of either parent would secure the child's education and the satisfaction of its physical wants, but the child was a delicate female infant of four years; *Held*, that the child should for the time being at least be placed in the custody of its mother. *McKim v. McKim*, 389.

Marriage at common law; agreement, 431.

MARRIED WOMEN.

[See HUSBAND AND WIFE.]

MASTER AND SERVANT.

[See, also, NEGLIGENCE.]

Duty of servant; what are "lawful commands," 74.

MORTGAGE.**Of Personality.**

Chattel mortgage of firm property must be filed in place where individual member resides, not where firm does business, 72.

Fraudulent Mortgages of Personality; article by W. P. Wade, 281.

Where a chattel mortgage provides that the mortgagor may retain possession of the mortgaged property and use the same, and it is apparent from the nature of the property that the only reasonable use the mortgagor can make of it is to sell it, such mortgage is void on its face as to other creditors of the mortgagor. But if such permission applies only to a portion of the mortgaged property the mortgage will be valid as to the portion not so affected. *Davenport v. Foulke*, 427.

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MORTGAGE—Continued.

If by any arrangement, express or implied, the mortgagee allows the mortgagor to continue to sell the mortgaged goods at retail for his own benefit, the mortgage will be unavailing against judgment creditors of the mortgagor. *Id.*

Of Realty.

Where mortgage is executed to secure installments of money, each installment a separate lien, 103.

When equity will make cancellation of mortgage, 114. Mortgagee without notice of non-payment of purchase money has priority over subsequent mortgage to vendor, 136.

Inverse order of sale, 136.

On bill filed to foreclose mortgage, court may investigate and pass upon adverse legal titles, 196.

In action by vendor of real estate conveyed by deed of general warranty to foreclose mortgage given for purchase money, vendee and mortgagor may set up failure of title to property, 317.

Upon foreclosure of mortgage, how are notes maturing at different dates to be paid? Query 148; answer, 238, 259.

MUNICIPAL BONDS.

When irregularity in issue no defense, 72.

School bonds issued without proper notice of election as required by statute, void, 277.

Irregularities in issue; when void in hands of *bona fide* holder, 430.

Conditions in must be followed; construction; *bona fide* holder, 475.

MUNICIPAL CORPORATIONS.

[See, also, NEGLIGENCE.]

Property of, not subject to levy or sale under execution, 32.

City ordinance as to stock running at large; right to hearing on question of forfeiture, 73.

Constitutional provision that "no bill shall contain more than one subject, which shall be clearly expressed in its title" has no application to city ordinances, 136.

Precincts in Nebraska are without corporate powers, 235.

City ordinance; conviction before mayor; appeal, 297.

City can not recover from a person pursuing a trade or calling, for the privilege of which it has received and retains the consideration exacted of him, 358.

City ordinance that no horse or cattle dealer shall engage in such business without a license, which however is not to be granted without a certificate from the board of police commissioners that the applicant is a person of good moral character, not unreasonable, 360.

Liability for buildings destroyed to prevent spread of fire; Massachusetts statute, 375.

Municipal corporation, independent of legislative authority, may forbid erection or compel the removal of buildings constructed of combustible materials within densely built portions of town, 440.

City ordinance requiring the owner of dog to obtain license for keeping same, and subjecting him to arrest, fine and imprisonment for not procuring such license, invalid, 440.

Officers of municipal corporation exceeding their powers may be enjoined at suit of tax payers, 455.

MURDER.

[See HOMICIDE.]

MUTUAL BENEFIT INSURANCE.

[See INSURANCE.]

NAMES.

Any one may have as many middle names or initials as are given to him, or as he chooses to take; they do not affect his legal name, and they may be inserted or not in a deed or contract without affecting its legal validity, 216, 357.

NATIONAL BANKS.

[See BANKS AND BANKING; EMBEZZLEMENT; JURISDICTION.]

NE EXEAT.

Writ of, will not be granted unless defendant is about to depart from the United States, 233.

U. S. District Judge, though sitting as Circuit Judge, is not authorized to issue the writ, 234.

NEGLIGENCE.**Contributory Negligence.**

Not contributory negligence for engineer to remain at post of duty, 17.

NEGLIGENCE—Continued.

Nor for common seamen to obey orders, 116.

If the servant, having knowledge of a defect in machinery, gives notice thereof to the proper officer, and is promised that such defect shall be remedied, his subsequent use of the machinery, in the belief, well-grounded, that it will be put in proper condition within a reasonable time, does not necessarily, or as matter of law, make him guilty of contributory negligence. *Houston v. Texas etc., R. Co.*, 108.

In crossing railway track, 34.

Contributory negligence during use of pyrotechnics, 73.

That deceased was drunk and unconscious, no defense to action for his death by being expelled from saloon on a cold night, 75.

The plaintiff carried on business under the name of "Wood Brothers," in violation of a statute which prohibited the use of fictitious names in firms. A carriage was purchased by him in the firm name and shipped to "Wood Brothers," on defendant's railroad to be delivered "to the party entitled to the same." It was injured in transit. *Held*, that the plaintiff could maintain an action for the injury, 239.

Where in an action against a street railway company for damages for the death of plaintiff's child, alleged to have been caused by the negligence of defendant's servants, the plaintiff's evidence developed the fact that the child was only in his seventh year, and was accustomed to furnish spring water to the conductors and drivers upon the defendants' cars, in doing which the child had the plaintiff's permission and encouragement; and was thus engaged at the time of the accident causing its death: *Held*, that it was contributory negligence *per se* on the part of the plaintiff to suffer her child to engage in so dangerous an occupation, and that a nonsuit was properly entered. *Smith v. Hestonville etc. R. Co.*, with note by E. G. Merriam, 272.

In crossing railroad track, 316.

Of passenger in alighting from street car, 337.

Not contributory negligence to stand on platform of crowded street car, 359.

Failure of person crossing track to stop and listen not material where injury was not the result of that neglect, 436.

In alighting from car on a stormy night, 457.

In General.

Liability for Negligence not Arising out of Contractual Obligation: article from *Solicitors' Journal*, 4.

In an action under Lord Campbell's act for negligently causing the death of plaintiff's son, B, it appeared that the latter at the date of his death, was fourteen years of age and was attending school except during his vacation when he assisted his father in his shop. B was not then in the receipt of any wages but at seventeen would have been worth \$20 a year to his father and at twenty, \$100. The plaintiff (aged fifty) admitted that he "turned" about \$7,000 per annum on his business, and that his income was sufficient: *Held*, that there was no evidence of damage to the plaintiff within the statute, proper to be submitted to the jury. *Burke v. Cork etc. R. Co.* 48; note, *Irish Law Times*, 51.

Liability for act of one compulsorily in charge of defendant's property, 71.

Liability for careless use of pyrotechnics, 73.

M, a guest at a hotel, being assigned to a room which he had before occupied, and believing he could find it without difficulty, declined the services of the bell boy which were proffered. Arriving at the end of the hall, where the room was situated, M by mistake opened a door which led into an elevator opening. It was at night and the hall was dimly lighted. M not discerning his mistake stepped through the door, intending to strike a match and light the room, when he fell to the basement, receiving severe injuries. *Held*, that the conduct of the hotel keeper in permitting the dangerous opening to remain unguarded, amounted to gross negligence, and that M could recover. *Haywood v. Merrill*, 330.

Actions for Negligence; article from *Solicitors' Journal*, 385.

Liability of lessor for condition of premises; injury to child of sub-lessee, 75.

Attorneys employed by the purchaser of real estate to examine the title to the same prior to the conveyance impliedly contract with their employer to exercise reasonable care and skill in the performance of the undertaking. *National Savings Bk. v. Ward*, 130.

Reasonable care and skill is also required by law of an attorney when employed to investigate the title to real estate with a view to ascertain whether it is a safe and sufficient security for a loan of money, and in either case if the attorney is negligent or fails to exercise reasonable care and skill in the performance

NEGLIGENCE—Continued.

of the service, and loss ensues to his employer from such negligence or want of care and skill, he may be held liable to his employer for the consequences of such negligence. *Id.*

Where there is neither fraud, falsehood nor collusion, the obligation of the attorney to exercise reasonable care and skill in the performance of the designated service is to the client and not to a third party, the rule being that the attorney, where no such wrongful elements exist, is not liable for the want of reasonable care and skill at the suit of any one between whom and himself the relation of attorney and client does not in some manner exist. *Id.*

Therefore, an action will not lie where it appears, as in this case, that the plaintiffs never employed the defendant to investigate the title or make the report, and that he never performed any such service at their request or in their behalf, but instead of that he was employed by the claimant of the lot and was paid for his services by his employer. *Id.*

Accidents on the Highway; article by Seymour D. Thompson, 161.

Degree of skill required of physician, 175.

Res Ipsa Loquitur; article by Seymour D. Thompson, 261.

Master and Servant.

Risks assumed by employee, 16.

Duty of master as to machinery, 33, 118.

Who are fellow servants, 33.

For negligence of contractor in omitting to erect stock guards and fences during construction of road, railroad is liable, 79.

The master, whether a natural person or a corporation, although not to be held as guaranteeing the absolute safety or perfection of machinery or other apparatus provided for the servant, is bound to observe all the care which the exigencies of the situation reasonably require, in furnishing instrumentalities adequately safe for use. *Hough v. Texas*, etc. R. Co., 108.

A person voluntarily assisting the servant of another in a particular emergency can not recover from the master for an injury occasioned by the negligence of the servant, 239.

When one servant is injured by the negligence or want of care of a fellow servant while both are engaged in the same line of business, each participating in the same work, the common master will not be liable for the injury. But when they are performing separate and distinct duties having no connection with each other, so that neither one can control or influence the other, and one is injured by the negligence of the other while in the discharge of his duty, the master will be liable to the injured servant the same as to a stranger. *Chicago*, etc. R. Co. v. *Moranda*, 348.

A track repairer and a fireman on a passing engine, in the employ of the same master, are not "fellow servants" so as to release the master from liability for injuries sustained by one through the negligence of the other. *Id.*

Incompetency of servants; care in selection; burden of proof, 377.

Railroad employee injured by bridge while standing on top of car can not recover, 440.

A kept in his factory-yard a fierce dog, which was fastened in the day time and loose at night. B, a night watchman of A, opened the gate every morning. C, A's engineer, loosed the dog at night, notifying B, and fastening him in the morning. One morning B not knowing that the dog was loose opened the gate, and was attacked and injured; *Held*, that he could recover notwithstanding the negligence of C, 440.

Alteration in English law as to liability of master for injuries to servant, 498.

Municipal Corporations.

Injury from slippery sidewalk; when corporation liable, 96.

A city is not liable in tort for the act of its treasurer, acting in good faith in the execution of his tax warrant, in seizing and selling the chattels of one person for the delinquent taxes of another. *Wallace v. City of Menasha*, 147.

Defects in streets to be so notorious as to render corporation liable need not be within exclusive knowledge of citizens only; it is enough if they are known to travelers, etc. 154.

Notice of defective sidewalk by city council, 195.

Liability of, for injury in carrying on blasting operations in constructing sewer, 316.

Liability of city on warrants negligently issued by officers, 357.

NEGLIGENCE—Continued.

Liability of municipal corporation for injuries to children coasting on streets, 435.

Liable for injury caused by fright of horse at carcass allowed to remain on street, 436.

A city ordinance requiring lot owners to construct and repair sidewalks, and providing that upon their failure to do so the city shall perform the work and assess the cost upon the lots, does not render a lot owner liable for injuries to a pedestrian, sustained by his sidewalk being out of repair. *City of Keokuk v. Independent District of Keokuk*, 448.

Railroad Companies.

A railroad company is not liable for injuries occasioned by one of its engines to an employee of one who has contracted to repair a bridge on a highway over its road, when it appears that such employee, at the time of the injury, was crossing over the track from one abutment to the other under the direction and for the convenience of the contractor, and that no inherent difficulty in the nature of the work required such a use of the track. *Sweeny v. Boston*, etc. R. Co., 7.

Duty to fence tracks, 56.

A street railroad company agreed with the city to keep the street in and about the rails in repair. A trench being dug by a private party, licensed by the city, across the street, the company in order to pass its cars bridged it over with timbers. In driving over this structure in a cart, plaintiff was injured by the joists separating. *Held*, that the company was liable, both by reason of its contract with the city, and because it undertook to bridge the trench and did not do so properly. *McMahon v. Second Ave. R. Co.*, 68.

The contract between the city and the company provided that the latter should keep in repair the street "in and about" the rails. *Held*, that one foot outside the rails was within these words. *Id.*

Failure to fence; owner of cattle may recover though cattle trespassing, 101.

Those in the organization of a railroad corporation who are invested with the controlling or superior duty in that regard, represent its personality; their negligence, from which injury results, is the negligence of the corporation. *Hough v. Texas*, etc. R. Co., 108.

Injury to child climbing on car; when company not liable. *Central Branch Co. v. Henigh*, 208.

Negligence of driver of street car in stopping car for passenger to alight, 337.

Railroad Fires; Evidence of Negligence, 361.

NEGOTIABLE AND ASSIGNABLE PAPER.

The statutes of Alabama examined, and held to place bills of exchange and promissory notes, payable in money at "a certain place of payment designated therein," upon the same basis as to immunity from set-off, discount or equities, as bills and notes payable at a bank or private banking-house. Such declared to be the intention and effect of the act of April 8, 1878, amended section 1833 of the Revised Code of Alabama. *Oates v. First Nat. Bk.*, 9.

A creditor who takes a negotiable note before maturity, so indorsed that he becomes a party to the instrument, as collateral security for a pre-existing debt, in consideration of an extension of time to the debtor actually granted is, according to the law merchant, a holder for value, and his rights as such are not affected by equities between antecedent parties of which he had no notice. *Id.*

A National bank, at the request of its debtor, gave further time in consideration of the transfer, before maturity, of a negotiable note, as collateral security, and in consideration also of the payment in advance of usurious interest, for the period of extension. The note was so indorsed as to make the bank a party to the instrument responsible for its due presentation and for due notice of non-payment. The consideration was in part legal and in part vicious. The former was itself sufficient to sustain the contract of extension and transfer, and to constitute the bank a holder for value. While the bank was subject to the penalties denounced by law for taking usurious interest, the statute under which it was organized had not declared the contract of indorsement void. No such penalty being prescribed, the courts could not superadd it. *Id.*

Promissory note stating sum in figures valid, 46.

Holder of bank check no claim against drawee, 94.

Note with words "given as collateral security with agreement," 96.

A purchaser and holder of counterfeit United States bonds, redeemed by the United States after his purchase, may recover the purchase money without returning the bonds and before paying the United States, 238.

NEGOTIABLE AND ASSIGNABLE PAPER—Continued.

Stipulation in note "If this note is not paid at maturity the same shall bear twelve per cent. interest from date," does not destroy its negotiability, 317.

The Negotiability of Promissory Notes; article by Wilber L. Stonex, 321.

A writing in this form: "\$300. St. Paul, Minn., January 22, 1879. D. & Co., Bankers: Pay to the order of, on sight, \$300, in current funds. E. L." Held, not a check, 336.

Individual liability of officers of corporations on promissory notes, 337.

City warrants not negotiable paper, 337.

Where the collection of indorsed notes has been enjoined by bill on the part of the maker and indorser before maturity, holder is excused from demand and notice as to such indorser, 377.

Where consideration of note is illegal in part no recovery can be had on note, 375.

Bill of exchange; blank acceptance; name of drawer and indorser in same handwriting; forged indorsement; admissibility of evidence to prove, 416.

Note given in violation of U. S. statute imposing penalty not void, 436.

Party having no funds in bank not entitled to notice of dishonor of check, 455.

Note given in consideration that payee will give maker his interest in ensuing election for sheriff void, 463.

Indorser warrants genuineness of indorsements, 496.

Drawee bound to know signature of drawer but not of indorser, 496.

NEWSPAPER.

[See, also, COPYRIGHTS AND TRADE-MARKS.]

Rights of editor of newspaper, 45.

One newspaper may solicit subscribers of another, 463.

NEW TRIAL.

[See PLEADING AND PRACTICE.]

NOTARIES.

The Powers and Liabilities of Notaries in Taking Depositions under the Law of Missouri; article by B. F. Rex, 143.

Notarial Protest; article by W. H. Whitaker, 181.

Can a notary public, an interested party, take a valid acknowledgment? Query, (9 Cent. L. J. 500) answer, 17, 77, 98.

NOTICE.

Notice of Sale; article by H. W. Rogers, 21.

S mortgaged to R a piece of property which by mistake was described as being in section 18 instead of 21, and was so recorded. Soon after a brother of S purchased the same property not knowing of the mortgage, and after an examination of the records. The fact of the mortgage was generally known in the community. The brother paid all but \$250 of the purchase-money, before he learned of the mortgage from a son of the mortgagee. He afterwards paid S the balance. Held, that the circumstances attending the purchase did not amount to constructive notice, and that the facts were not of such a character as to put an honest and ordinarily prudent man on inquiry, but that the purchaser having learned of the existence of the mortgage before paying the balance of the purchase money, he should be held a trustee for the mortgagee to the extent of the amount of the balance. *Slattery v. Rafferty*, with note by W. P. Wade, 310.

Publication of notice; effect of change in name and location of newspaper, 337.

To what extent is a purchaser bound to inquire as to other conveyances? Query, 437; answer, 498.

NUISANCE.

Unreasonable delay bars remedy, 115.

Railroad in street; continuing nuisance; damages, 154. In considering what is a nuisance regard must be had to the locality, 174.

A corn and flouring mill in a city, not *per se*, a nuisance, 239.

Blacksmiths' shop may be declared a nuisance, 397.

Carrying on of offensive slaughter-house will be enjoined, 440.

Liberty pole on street not a, 458.

OBSCENE LITERATURE.

Who is Mr. Anthony Comstock? 439.

Chief Justice Cockburn's definition of "obscene," 480.

OFFICES AND OFFICERS.

Fees of officers are recoverable only as authorized by express statute, 16.

Mayor of a city who performs duties of a justice of the peace in criminal actions, prosecuted in the name of

OFFICES AND OFFICERS—Continued.

the State, not entitled to same compensation as justices of the peace whose compensation and mode of payment is fixed by statute, 16.

Mandamus will not lie on behalf of one claiming the office of judge of a county court, directing another who holds the commission and is exercising its duties, to admit the petitioner to that office, 45.

Former public officer has no authority to certify proceedings had before him while in office, 46.

The Civil Liability of Sheriffs and Records, 81.

Liability of army officers for official acts, 174.

Money due from State to officer; judgment on official bond can not be set-off; discharge in bankruptcy does not affect claim of State.

County attorney going beyond limits of county to transact business for it, entitled to compensation from board, 275.

A public officer must discharge all the duties of his office for the compensation allowed by law, and will not be allowed compensation for extra work unless authorized by statute, 290.

Where treasurer of public funds receives interest from the use or loaning of such funds, such interest will not belong to him, 434.

R held a mortgage on lands on which a tax was assessed for the year 1874. P, the tax collector, falsely made return that there was no personal property upon the land, and the tax becoming thereby a lien thereon, R was forced to redeem. Held, that P was liable to R for the money paid by him. *Raynsford v. Phelps* 464.

OFFICIAL BONDS.

[See SURETYSHIP AND GUARANTY.]

OPINION EVIDENCE.

[See EVIDENCE.]

OPTION CONTRACTS.

[See CONTRACTS.]

PARENT AND CHILD.

[See, also, INFANCY.]

Action will not lie by parent for procuring child's marriage without his consent, 463.

PAROL EVIDENCE.

[See EVIDENCE.]

PARTIES.

[See PLEADING AND PRACTICE.]

PARTITION.

Court may investigate and determine conflicting titles, 195.

When partition is made and title of one afterwards turns out to be bad, what is his remedy? Query, 437; answer, 498.

PARTNERSHIP.

When incoming partner liable for old debts, 32.

Partnership realty, 102, 159.

Taking, not as payment, of the individual note of one partner for money loaned, though evidence that loan was not made to firm, not conclusive of that fact, 116.

Where such individual note of one partner is taken for loan made at the time to the firm, presumption is that it is not taken as payment, 116.

Mutual mistake in settlement; partner may maintain action, 317.

When one partner, without the knowledge or consent of his co-partner, pays his own note to a private creditor out of the funds of the insolvent firm, such creditor knowing that the money belonged to the firm, the funds so received will be regarded as held by the private creditor in trust for the benefit of the firm, and may be attached in his hands upon a trustee process instituted against the firm by one of the creditors. *Johnson v. Hersey*, 387.

Continuance of business by partners after expiration of term of original articles; application of articles to new partnership, 416.

PATENTS.

Account of Profits Independent of Injunction; article by W. H. Whitaker, 61.

Infringement of patent for pumps; injunction will lie against master of ship, 72.

T, who owned a patent for turning saw-logs, assigned his right to R for a certain royalty. Afterwards R, discovering that several parties were using the same kind of machine or machines within the scope of his patent, without being entitled and without any right, settled with them for a consideration and allowed them to continue. In an action by T against R:

PATENTS—Continued.

Held, that the latter was liable in these cases for the stipulated royalty, 338.

PLEAS.

[See PLEADING AND PRACTICE.]

PLEADING AND PRACTICE.

Amendment.

Decree can not be amended at subsequent term, 45.

Answer; plea.

A general denial followed by special averments of non-compliance with the terms of the contract sued on, puts in issue only such matters as are specially pleaded, 289.

Conduct of Trial.

Polling the Jury; article by David R. Shelby, 1.

Where a defendant in a criminal case agrees to a sealed verdict, and the jury deliver their verdict, finding him guilty, to the clerk of the court and separate, the defendant has no right to have the jury polled when the verdict is read. *U. S. v. Bridges*, 7. Not error to discharge juror where exceptional jury is afterwards obtained, 9.

Demand for written instruction must be made within reasonable time, 98.

To instruct a jury that "common sense" is their best guide, error, 186.

The rule that all judicial proceedings must be conducted in the English language seems to be applicable only to the pleadings. Contracts in another language may be sued on; foreign witnesses examined and non-English speaking prisoners put on trial. So, also, the written instructions of the court might be translated into the language of a juror. *Town of Trinidad v. Simpson*, 149.

The fact that a person can not speak or understand the English language does not necessarily disqualify him to serve as a juror; for the court has power to appoint an interpreter of the proceedings on the trial. *Id.*

Whether a court could appoint an interpreter to act as such in the jury room, *quære*, *Id.*

Counsel in argument to the jury may not use language calculated to degrade the opposite party in the eyes of the jury and bystanders, 239.

Continuance.

When refusal of, on account of absence of witnesses, proper, 275.

Deposition.

Suit against two defendants; deposition taken by one before other served, 33.

Equity.

A court of equity will not grant a rehearing, because of an error of judgment or mistake of law by counsel as to the pertinency or force of certain evidence, 149.

Practice on "feigned issue" in chancery, 297.

Decree upon demurrer when conclusive, 456.

Federal Courts.

Rules of pleading and practice adopted in the Federal circuit court stated. *Gause v. Knapp*, 283.

Forms of Action.

Where money paid on rescinded contract, petition for money had and received sufficient; *aliter* if contract be subsisting, 33.

Instructions.

When the court undertakes to instruct upon any point upon its own motion, it must not only instruct correctly but fully, and for failure to do so the case may be reversed. It is error to give instructions unsupported by evidence. *Fritz v. Finnerty*, 487.

Jury. See, also, Conduct of Trial.

Unanimity of Juries; article by W. H. Whitaker, 483.

Miscellaneous.

Stenographer's fees; at what rate recoverable, 78.

When plaintiff may dismiss his action without prejudice to future action, 136.

When court may order stay of case and payment of costs on appeal, 156.

Exceptions to master's report of sale inadmissible which require court to go behind or modify decree under which sale was made, or to look outside record on which it is based, 456.

A decretal order will not be modified at a subsequent term upon grounds which should have been urged when order was made, 456.

PLEADING AND PRACTICE—Continued.

New Trial.

When costs of, should and should not be taxed against party moving, 268.

Parties.

Party need not be joined as defendant where properly joined as plaintiff, 97.

When infant must sue on joint contract, 135.

Joint action can not be maintained against maker and guarantor of note, 235.

Stranger to Contract Enforcing it; article from *Canada Law Journal*, 244.

Joint owner of property should be united in action to recover it, 258.

Joinder of action against administrator and sureties, 274.

Process.

In suit for specific performance where defendant lives outside of county, how is service to be obtained? Query 118; answer 198.

Set-off and Counterclaim.

Cause of action in a tenant against his landlord for wrongfully interfering with his employment of premises rented, a counterclaim in an action against him by the landlord to recover rent for a period including that of such interference, 14.

Subjects of counterclaim, 102.

On decree for default in payment of coupons, a debt can not be set-off, 455.

PLEDGE.

Where note is pledged as collateral security for a debt, and pledgee brings suit to collect, reasonable fees of counsel in such suit are a charge upon the pledgor and only the net proceeds of the collection after payment of such fees are a payment upon the debt, 237.

Although factor has no right to pledge goods of principal, still the amount sought to be recovered of an innocent pledgee of the factor shall be reduced by the sums due from the principal to his factor, 238.

Executor may not pledge property of testator in aid of firm where testator was partner, 430.

Subject of pledge being divisible, if pledgee sells more than is necessary to satisfy debt he is liable in damages to pledgor, 440.

Can party advancing money on goods in possession of another as factor recover from principal? Query, 398; answer, 478.

POWERS.

A power to sell lands does not authorize the making of a mortgage, 140.

PRACTICE.

[See PLEADING AND PRACTICE.]

PRINCIPAL AND AGENT.

[See AGENCY.]

PRIVILEGED COMMUNICATIONS.

[See EVIDENCE.]

PROCESS.

[See PLEADING AND PRACTICE.]

PROFESSIONAL ETHICS.

Attempt to influence the decision of a court by petition, 339.

A government prosecutor testifying for the prisoner, 579.

Under what circumstances a disbarred attorney should be re-admitted, 498.

PROHIBITION.

When writ of prohibition will be granted, 117.

PROMISE.

[See CONTRACTS.]

PUBLICATION.

[See NOTICE.]

RAILROADS.

[See COMMON CARRIERS; NEGLIGENCE.]

RAPE.

Rape and incest are distinct offenses, and can not be charged in the same indictment. Assent by both parties is a necessary ingredient to the latter crime. *State v. Thomas*, 327.

RECEIVER.

Right of, to property; interference with a contempt, 32.

The abuse of receivers, 77.

RECEIVER—Continued.

Application for attorney's compensation must be made in suit in which receiver appointed, 378.

A person having a legal cause of action sounding merely in tort, against a receiver appointed by the court of chancery, has a right to pursue his redress by an action at law. *Palys v. Jewett*, and note by John H. Stewart, 410.

Such action can not be brought without the permission of the chancellor, but such permission can not be refused, unless the claim preferred be manifestly unfounded and vexatious. *Id.*

As the right of the chancellor to sanction the bringing of the action, conferred a *scintilla* of jurisdiction over the case, and the parties proceeded to try the cause before the vice-chancellor: *Held*, that the Court of Appeals could lawfully exercise its jurisdiction by way of review, and the decree being reversed, the complainant's damages were ascertained and adjudged to him on this appeal. *Id.*

RECORDS.

[See EVIDENCE; JUDGMENTS AND DECREES.]

REFORMATION.

An action to reform a written instrument is in the nature of an action for specific performance, and relief is granted on the same principles. Therefore, a mere voluntary instrument or a contract originally *nudum pactum* will not be reformed. *Petesich v. Hambach*, 368.

P being the owner of two lots, one occupied by him as a homestead, the other of little value, gave a mortgage in which his wife joined, intending to cover his homestead. By mistake the deed described the other lot. P having subsequently died: *Held*, that there could be no reformation of the instrument. *Id.*

REHEARING.

[See PLEADING AND PRACTICE.]

RELEVANCY.

[See EVIDENCE.]

RELIGIOUS SOCIETIES AND PERSONS.

[See, also, *ULTRA VIRES*.]

The profession of a priest is his property, and the prohibition of the exercise of that profession by a higher church officer, without accusation or hearing, is a proceeding contrary to the law of the land, which a court of equity will restrain. *O'Hara v. Stack*, 27.

REMOVAL OF CAUSES.

Construction of act of March 3, 1875, 14.

Under statutes of Texas as to landlord and tenant, *Greene v. Klinger*, 74.

Second removal after cause remanded to State court, 94.

When petition not in time, 174.

Removal not allowed unless opponent of moving party resident of State where suit brought, 174.

D was indicted for murder in a State court of Tennessee. In his petition, duly verified, for removal of the prosecution to the Federal court, he stated that although indicted for murder no murder was committed; that the killing was done in the petitioner's own necessary self-defense to save his own life; that at the time when the alleged act for which he was indicted was committed he was and is an officer of the United States, to wit, a deputy collector of internal revenue; that the act for which he was indicted was performed in his own necessary self-defense while engaged in the discharge of his duties as deputy collector, and while acting by and under the authority of the internal revenue laws of the United States; that what he did was done under and by right of his said office; that it was his duty to seize illicit distilleries and the apparatus that is used for the illicit and unlawful distillation of spirits; and that while so attempting to enforce the revenue laws of the United States as deputy collector as aforesaid he was assaulted and fired upon by a number of armed men, and that in defense of his own life he returned the fire, which is the killing mentioned in the indictment. *Held*, that the petition was in conformity with the statute, and upon being filed the prosecution was properly removed to the Circuit Court of the United States for that district. *State v. Davis*, 251.

REPLEVIN.

Can not be maintained without previous demand, 136. Action commenced without previous demand no bar to subsequent action, 136.

Defective verdict in, 257

RES ADJUDICATA.

[See EJECTMENT; JUDGMENTS AND DECREES.]

RESCISSION.

[See CONTRACTS; DEEDS.]

RES GESTÆ.

[See EVIDENCE.]

REVENUE LAWS.

Suffering distillery on premises; knowledge of its existence immaterial, 113.

REVOCATION.

[See CONTRACTS; WILLS.]

RIOT.

Disturbing peace by singing on "sidewalks or streets," 177.

SALES.

[See, also, *CONTRACTS*.]

Conditional sales of personal property; renting; laches, 433.

Where personal property is delivered where agreed, title passes, 495.

SCHOOLS AND SCHOOL LAW.

Power of school directors to allow religious meetings in school houses, 177.

Contract for employment of unlicensed teacher is void by statute, and is not ratified by subsequent issuance of license to teacher, 297.

Liability of school directors for expelling scholars, 376.

SECONDARY EVIDENCE.

[See EVIDENCE.]

SEDUCTION.

[See, also, *BREACH OF PROMISE OF MARRIAGE*.]

In action for seduction, competent for plaintiff to prove good character of his own family, and also good character and standing of defendant's family, 460.

SET OFF.

[See PLEADING AND PRACTICE.]

SHERIFFS.

[See OFFICES AND OFFICERS.]

SLANDER AND LIBEL.

The defendant, who was not a reporter or otherwise connected with the press, sent to a newspaper a report of certain proceedings in a county court. The report contained matter defamatory of the plaintiff, and in an action brought by him against the defendant for the libel, the jury found that the report was a fair and substantially accurate one, but was sent with a certain amount of malice. *Held*, that the plaintiff was entitled to judgment upon these findings. *Stevens v. Sampson*, 25.

Words uttered in regular course of justice not actionable however defamatory, 44.

Charging crime against nature not actionable in Alabama, 44.

Proceedings of church organization privileged, 74.

Writings published in course of justice, 76.

"He died of the bad disease" not actionable, 114.

Publication of libel presumed to be malicious, 176.

Retraction of article after suit brought can not be considered in mitigation of damages, 176.

Letter or copy of letter containing character of servant by late master to one about to employ him only privileged when without malice, 233.

Circular containing words "Messrs. H. & Son hereby give notice that they will not receive in payment checks drawn on any of the branches of the C Bank" constitutes libel, 454.

Test of libel is result which it is likely to produce in minds of those who read it, 454.

Word "thief" is not *per se* actionable, 464.

Nor words imputing adultery to a married woman, 464.

Privilege in actions for defamation of character, 478.

SLEEPING CARS.

[See CARRIERS.]

SPECIFIC PERFORMANCE.

F contracted to sell and G to purchase fifteen shares of stock in a National bank, which were necessary to give G control of a majority of the stock. F refused to deliver the stock. *Held*, that this was a contract of which, for reasons of public policy, equity would not enforce specific performance. *Foll's Appeal*, 67.

SPIRITUALISM.[See *WILLS*.]**STAGE COACH.**[See *ATTACHMENT*.]**STATUTES.**

The intention of the legislature, clearly expressed in a constitutional enactment, should not be defeated by too rigid adherence to the letter of the statute, or by technical rules of construction. Any construction should be disregarded which leads to absurd consequences. *Oates v. First Nat. Bank*, 9.

Repeal of statute giving jurisdiction to court deprives it of right to pronounce judgment in proceeding previously pending, 425.

Re-enacting into code general provisions of prior laws does not repeal exceptions to which general provisions were subject, 464.

STATUTE OF FRAUDS.[See *CONTRACTS*.]**STATUTE OF LIMITATIONS.**[See *LIMITATION*.]**STENOGRAPHERS.**[See *PLEADING AND PRACTICE*.]**STOCKHOLDERS.**[See *CORPORATIONS*.]**STOPPAGE IN TRANSITU.**

Where a vendee has sold to a sub-vendee, so long as transit originally contemplated between original vendor and vendee continues, original unpaid vendor's right of stoppage *in transitu* remains, subject to sub-vendee's equity to have goods on paying for them, 454.

SUBSCRIPTIONS.[See *CONTRACTS*.]**STAGE COACH.**[See *ATTACHMENT*.]**SUNDAY.**

Cutting of "dead ripe" wheat on Sunday a "work of necessity," 177.

Selling cigars in hotel on Sunday a "work of necessity," 297.

Subscription to church building a "work of charity," 336.

Promissory note made on Sunday; presumption as to law of another State, 337.

SURETIES.[See *SURETYSHIP AND GUARANTY*.]**SURETYSHIP AND GUARANTY.****In General.**

When notice of acceptance of guaranty not necessary, 16.

Discharge of surety by alteration in terms of contract, 156.

Bond to dissolve attachment; effect on sureties of amendment of declaration, 175.

Defense of surety that signature was conditional, 176.

Continuing guaranty for advances; death of guarantor; determination of guaranty, 233.

Contribution among sureties; article by S. S. Merrill, 364.

Sureties on bond of assistant clerk discharged by his promotion to book-keeper, 273.

Alteration in Position of Surety; article from *Law Times*, 301.

Sureties on the bond of a book-keeper of a bank are discharged by his employment, without their consent, as teller, 360.

A judgment against the principal in an official bond, appearing by the record to have been recovered for acts or omissions which would be a breach of the conditions of the bond, is admissible against the sureties, in an action upon the bond, as at least *prima facie* evidence of plaintiff's right to recover, and of the amount he is entitled to recover. *Stevens v. Shafer*, 331.

Appeal bonds; when liability of surety becomes fixed, 375.

Agreement to see employees paid; one subsequently employed not entitled to its benefit, 476.

A cashier's bond conditioned for "the faithful discharge of the duties of his office" is broken by any violation of any valid by-law of the corporation, 464.

SURETYSHIP AND GUARANTY—Continued.

Does an extension from "year to year" release a surety? Query, 98; answers, 158, 235.

"I guarantee within note payable, B;" what is B's liability? Query, 218; answers, 259, 298.

Official Bonds.

Sureties on bond of tavern-keeper may be adjudged to pay for breach, before conviction of principal, 16.

Criticism on *Boone Co. v. Jones* holding that sureties on an official bond are estopped by the settlement of their principal from showing that a default really occurred before the date of their bond, when by his settlement the contrary appeared to be the case, 18.

Where officer required by superior to give bond with condition not required by statute, bond void *in toto*, 84.

Performance excused by act of God or public enemy, 94.

What are within scope of officer's duties, 113.

Failure of principal to sign bond; release of sureties, 137.

Words "resident freeholders" in statute requiring bond signed by two resident freeholders as sureties, means "resident freeholders" of the State and not of the county, 236.

Liability of sureties can not be released by erasing their names, 378.

Party executing bonds with blanks gives authority to have them filled, 434.

Failure of officer to file bond within prescribed time does not forfeit office nor release sureties, 434.

In action on bond of officer for second term sureties estopped from denying truth of his former settlements, 434.

Sureties on sheriff's bond not liable for his defaults as tax collector, 496.

TAXATION.[See, also, *CONSTITUTIONAL LAW*.]

Assessment; description of property, 216.

The provision of the National bank law that State taxation on the shares of the banks shall not be at a greater rate than is assessed on other money capital in the hands of citizens of the State, has reference to the entire process of assessment, and includes the valuation of the shares as well as the ratio of percentage charged on such valuation. *People v. Weaver*, 247.

A statute of a State, therefore, which establishes a mode of assessment by which the shares of a National bank are valued higher in proportion to their real value than other moneyed capital, is in conflict with the act of Congress, though no greater percentage is levied on that valuation than on the value of other moneyed capital. *Id.*

The statute of New York of 1866, which permits a debtor to deduct the amount of his debts from the valuation of all his personal property, including moneyed capital, except his bank shares, taxes those shares at a greater rate than other moneyed capital, and is, therefore, void, as to the shares of National banks. *Id.*

Although the statutes of a State provide for the valuation of all moneyed capital for purposes of taxation at its true cash value, including shares of the National banks, the systematic and intentional valuation of all moneyed capital by the taxing officers far below its true value, while National bank shares are assessed at their full value, is a violation of the act of Congress which prescribes the rule by which those shares shall be taxed by State authority. *Pelton v. Commercial Nat. Bk.*, 250.

In such case, on payment or tender of the sum which the bank shares ought to pay under the rules established by the act of Congress, a court of equity will enjoin the State authorities from collecting the remainder. *Id.*

Under sec. 3186 of the Revised Statutes, which provides that "if any person, bank, association, company or corporation liable to pay any tax, shall neglect or refuse to pay the same after demand, the amount shall be a lien in favor of the United States from the time it was due until paid * * * upon all property belonging to such person, bank, association, company or corporation," the lien when it attaches relates back to the time when the tax was due, but does not attach to property transferred to innocent purchasers prior to demand. *U. S. v. Pacific R. Co.*, 269.

An assessment is a prerequisite to the creation of a lien under the Revised Statutes where no return is made. *Id.*

Exemption of widow's property not for "charitable purposes" under constitutional provision allowing such exemption, 275; and see 443.

TAXATION—Continued.

Personal property temporarily in State not taxable there, 376.

A boat is subject to taxation at the place of its registration and where it lies up when not in use—*i. e.*, at its home port, without regard to the place where its owners may reside, 376.

A person not the owner or lessee of property who uses it with the owner for a compensation can not be assessed for one-half the taxes, 376.

Assessments on separate lots; modes of estimating cost, 397.

Exemption from taxation when a contract, 417.

Lien of taxes on crops; personal liability of purchaser of land for, 431.

When taxes on property in litigation will be paid out of rents, 456.

Equity will interfere to correct illegal but not erroneous tax, 495.

Can special assessments for local improvements impose a personal liability? Query, 76; answer, 118.

TELEGRAPHS.

The inviolability of telegraphs, 130.

Right of city to interfere with poles and wires of telegraph company in its streets, 140.

Action against company for failure to transmit message; construction of statute, 432.

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THEATRES.

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The right of the hiss, 57.

THREATENING COMMUNICATIONS.

Indictment for; requisites of crime, 236.

Law does not authorize the collection of just debts by the malicious threatening to accuse the debtor of a crime, 236.

TITLES.

In proceeding to quiet title one who has paid taxes on the land under mistake of fact as to ownership may recover them from rightful owner, 16.

An agreement to make abstract of title of lands from 1873 to 1877 does not oblige party to show conveyances, etc., outside of those dates, 336.

TRADEMARKS.

[See COPYRIGHTS AND TRADEMARKS.]

TRUSTS AND TRUSTEES.

Inadequacy in price at trust sale not alone evidence of fraud, 14.

Payment by trustee though on void order of court protected, 15.

Money deposited in savings bank on trust, 217.

When holder of title not trustee for person paying purchase money, 335.

A husband purchased a house and lot, paid for it, but had the title made to a third party, conveying it by absolute deed, with no trust whatever on its face. A parol trust was attempted to be asserted in favor of the wife, on the ground that the conveyance was so intended when made. *Held*, that as against creditors of the husband the claim of the wife could not be maintained; that the right of the creditor was to subject the land, as appeared from the face of the deed, which was recorded, in connection with the facts, and creditors could not be defeated in this right, except by deed or declaration of trust in writing, and duly registered, or noted for registration, as required by the registration laws. *Martin v. Lincoln*, 490.

ULTRA VIRES.

Incorporated church can not as a corporation, engage in the sale of tickets to the public for an excursion on board a steamer which the church has chartered for the occasion. Expenses incurred with a view to profits and profits lost, can not be recovered from the owner of the vessel on their failure to make the stipulated voyage, 32.

Unauthorized purchase by corporation; who may defeat title, 177.

The powers of corporations organized under legislative charters are only such as the statutes confer. Conceding that what is fairly implied is as much granted as what is expressed, it remains that the charter of a corporation is the measure of its powers, and that the enumeration of these powers implies the exclusion of all others. *Thomas v. West Jersey R. Co.* 306.

ULTRA VIRES—Continued.

A lease by a railroad company of all its road, rolling stock and franchises for which there is no express authority given in its charter is *ultra vires* and void. *Id.*

The ordinary clause in the charter authorizing such corporations to contract with other transportation companies for the mutual transfer of goods and passengers over each other's roads, is no authority to lease its road and franchises. *Id.*

The franchises and powers granted to such corporations are in a large measure designed to be exercised for the public good, and this exercise of them is the consideration of the public grant. Any contract by which the corporation disables itself to perform those duties to the public, or attempts to absolve it from their obligation without the consent of the State, is a violation of its contract with the State and is forbidden by public policy, and is, therefore, void. *Ibid.*

The fact that the legislature after such a lease is made passes a statute forbidding the directors of the company, its lessees or agents, from collecting more than a fixed amount of compensation for carrying passengers and freight, is not a ratification of such lease or an acknowledgment of its validity. *Id.*

Where in a lease of this kind for twenty years the lessors have resumed possession at the end of five years, and the accounts for that period have been adjusted and paid, a condition in the lease to pay the value of the unexpired term is void, and the case does not come within the principle that executed contracts which were originally *ultra vires* shall stand good for the protection of rights acquired under a completed transaction. *Id.*

None but State can object that contract is *ultra vires*, 476.

USAGES AND CUSTOMS.

Custom of railroad companies as to tracks, 338.

When usage of trade admissible, 397.

USURY.

[See INTEREST.]

WAREHOUSES AND WAREHOUSEMEN.

Warehouse receipts represent the property to which they refer, and their negotiability serves only to cut off any defense the warehouseman may have, 238.

Possession of a warehouse receipt regularly indorsed, is presumptive evidence of ownership of the goods described therein, 239.

Warehouse Receipts; article by W. H. Whitaker, 421.

WARRANTY.

Although as a general rule upon the sale of personal property there is no implied warranty as to quality, and the maxim *caveat emptor* applies, yet where goods are ordered for a particular purpose known to the seller, he impliedly undertakes that they shall be reasonably fit for the purpose for which they were ordered, and especially is this so if the seller is also a manufacturer of the goods ordered. *Gerst v. Jones*, 151.

Where there is a warranty, either express or implied, neither the ignorance of the seller nor the exercise of care and diligence can exempt him from liability if the goods do not answer the purposes for which they were sold. *Id.*

G, a manufacturer of boxes, agreed to furnish J, a manufacturer of tobacco, as many boxes as he should require in his business during a specified time at a certain price. The boxes furnished were of unseasoned wood, which caused the tobacco which was packed therein to mould. *Held*, that G was liable upon an implied warranty that the boxes were suitable for the purpose of packing tobacco. *Id.*

On the transfer of negotiable paper by delivery there is no implied warranty against usury, 239.

WATERS AND WATERCOURSES.

Sale of well and right to water therefrom; liability for diversion, 74.

WEAPONS.

[See HOMICIDE.]

WILLS.

Will may be established by declarations of testator, when, 45.

Codicil; revocation; re-execution of will without reference to codicil, 71.

Gift over before actual receipt of share valid, 71.

Bequest to bishop of Roman Catholic church when void, 72.

WILLS—Continued.

A held certain notes of D, who was her grandson. One night shortly before her death she destroyed the notes, and subsequently made frequent declarations to the effect that she did not wish D to pay them after her death. *Held*, a valid *donatio mortis causa*, 78.

Donee of heir not "person interested in the estate," within statute permitting suits to set aside wills, 79.

Acceptance of legacy does not estop one from claiming that will is invalid, 99.

A devise to "my beloved sons," naming three persons, is good, although two of them are illegitimate, 140.

Publication of will to witnesses not necessary under Iowa code, 154.

Condition in restraint of marriage, as devise to wife during her life, or so long as she remains my widow, void in Indiana, 197.

Word "family" in will includes testator's widow and child but not his stepson, 217.

The testator's will provided for the endowment of a public library, and directed that no book or work should be excluded from the library on account of its difference from the ordinary or conventional opinions on the subjects of science, government, theology, morals or medicine, provided it contains neither ribaldry nor indecency. *Held*, valid, 278.

When not revoked by tearing, 285, 454.

Will a man who has murdered his wife be allowed to take benefits under her will, 298.

WILLS—Continued.

Words of inheritance not necessary to pass fee by will if intent to pass is otherwise evinced, 353.

Devise; religious use; money to be expended in masses, 435.

Ademption of legacy by subsequent gift, 456.

Chancery court no jurisdiction of *devisavit vel non*, 456.

A testatrix prior to making her will, accompanied the legatee, her daughter, to a spiritualistic seance, where a pretended letter was read from her deceased husband, warning her against her son, and advising her to "fix" her property so that he could not get it. *Held*, that this was undue influence, 460.

WITNESSES.

[See EVIDENCE.]

WOMAN.

Women at the bar seeking disgraceful notoriety, 259.

WORDS AND PHRASES.

[See INTERPRETATION.]

WRITTEN INSTRUMENTS.

[As to how far written instruments are subject to parol evidence, see EVIDENCE. As to construction of particular words in written instruments, see INTERPRETATION.]

